(17,924.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 439.

THE ERIE RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

ALBERT L. PURDY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

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a Court of Appeals.

ALBERT L. PURDY, Plaintiff and Respondent,
against
ERIE RAILROAD COMPANY, Defendant and Appellant.

Appeal Book.

Albert L. Purdy, attorney in person for plaintiff and respondent, Wellsville, N. Y.

Moot, Sprague, Brownell & Marcy, attorneys for defendant and appellant, 45 Erie County Savings Bank building, Buffalo, N. Y.

1 *Statement under Rule* 41.

This is a consolidated action consisting of certain actions begun by Albert L. Purdy as plaintiff against Erie Railroad Company, defendant, which were previous to consolidation known as actions "A," "B" and 1 to 19 inclusive.

Action known as action No. 1, Albert L. Purdy, plaintiff, against Erie Railroad Company, defendant, was commenced by the service of summons and complaint upon defendant on the 29th day of June, 1896. A demurrer was served thereto which was subsequently overruled and answer served on the 11th day of October, 1896. The names of the original parties in full are Albert L. Purdy, plaintiff, Erie Railroad Company, defendant.

Action known as action No. 2 was commenced by the service of summons and complaint on the defendant on the 30th day of June, 1896. The defendant's answer thereto was served on the 1st day of September, 1896. The names of the original parties in full are Albert L. Purdy, plaintiff, and Erie Railroad Company, defendant.

Action known as action No. 3 was begun by service of summons and complaint on defendant on the 2nd day of July, 1896. Defendant's answer thereto was served on the 1st day of September, 1896, and the names of the original parties in full are Albert L. Purdy, plaintiff, and Erie Railroad Company, defendant.

2 Action known as No. 4 was commenced by the service of summons and complaint on defendant on the 7th day of July, 1896. The defendant's answer thereto was served on the 1st day of September, 1896. The names of the original parties in full are Albert L. Purdy, plaintiff, and Erie Railroad Company, defendant.

Action known as action No. 5 was commenced by the service of summons and complaint on defendant on the 13th day of July, 1896. The defendant's answer thereto was served on the 1st day of September, 1896. The names of the original parties in full are Albert L. Purdy, plaintiff, and Erie Railroad Company, defendant.

Action known as action No. 6 was commenced by the service of summons and complaint on defendant on the 13th day of August, 1896. The defendant's answer thereto was served on the 2nd day of September, 1896. The names of the original parties in full are Albert L. Purdy, plaintiff, and Erie Railroad Company, defendant.

Action known as action No. 7 was commenced by the service of summons and complaint on defendant on the 17th day of August, 1896. The defendant's answer thereto was served on the 8th day of September, 1896. The names of the original parties in full are Albert L. Purdy, plaintiff, and Erie Railroad Company, defendant.

Action known as action No. 8 was commenced by the service of summons and complaint on defendant on the 24th day of
3 August, 1896. The defendant's answer thereto was served on the 14th day of September, 1896. The names of the original parties in full are Albert L. Purdy, plaintiff, and Erie Railroad Company, defendant.

Action known as action No. 9 was commenced by the service of summons and complaint on defendant on the 26th day of August, 1896. The defendant's answer thereto was served on the 15th day of September, 1896. The names of the original parties in full are Albert L. Purdy, plaintiff, and Erie Railroad Company, defendant.

Action known as action No. 10, was commenced by the service of summons and complaint on defendant on the 28th day of August, 1896. The defendant's answer thereto was served on the 11th day of September, 1896. The names of the original parties in full are Albert L. Purdy, plaintiff, and Erie Railroad Company, defendant.

Action known as action No. 11, was commenced by the service of summons and complaint on defendant on the 30th day of October, 1896. The defendant's answer thereto was served on the 19th day of November, 1896. The names of the original parties in full are Albert L. Purdy, plaintiff, and Erie Railroad Company, defendant.

Action known as action No. 12, was commenced by the service of summons and complaint on defendant on the 9th day of November, 1896. Amended complaint was served on the 23rd day of November, 1896. The defendant's answer thereto was served on the
4 12th day of December, 1896. The names of the original parties in full are Albert L. Purdy, plaintiff, and Erie Railroad Company, defendant.

Action known as action No. 13, was commenced by the service of summons and complaint on defendant on the 12th day of March, 1897. The defendant's answer thereto was served on the 1st day of April, 1897. The names of the original parties in full are Albert L. Purdy, plaintiff, and Erie Railroad Company, defendant.

Action known as action No. 14, was commenced by the service of summons and complaint on defendant on the 28th day of July, 1897. The defendant's answer thereto was served on the 6th day of September, 1897. The names of the original parties in full are Albert L. Purdy, plaintiff, and Erie Railroad Company, defendant.

Action known as action No. 15, was commenced by the service of summons and complaint on defendant on the 2nd day of August, 1897. The defendant's answer thereto was served on the 6th day of September, 1897. The names of the original parties in full are Albert L. Purdy, plaintiff, and Erie Railroad Company, defendant.

Action known as action No. 16, was commenced by the service of summons and complaint on defendant on the 6th day of August, 1897. The defendant's answer thereto was served on the 6th day of

September, 1897. The names of the original parties in full are Albert L. Purdy, plaintiff, and Erie Railroad Company, defendant.

5 Action known as action No. 17, was commenced by the service of summons and complaint on defendant on the 9th day of August, 1897. The defendant's answer thereto was served on the 6th day of September, 1897. The names of the original parties in full are Albert L. Purdy, plaintiff, and Erie Railroad Company, defendant.

Action known as action No. 18, was commenced by the service of summons and complaint on defendant on the 13th day of August, 1897. The defendant's answer thereto was served on the 6th day of September, 1897. The names of the original parties in full are Albert L. Purdy, plaintiff, and Erie Railroad Company, defendant.

Action known as action No. 19, was commenced by the service of summons and complaint on defendant on the 31st day of August, 1897. The defendant's answer thereto was served on the 6th day of September, 1897. The names of the original parties in full are Albert L. Purdy, plaintiff, and Erie Railroad Company, defendant.

Action known as "A" was begun in the justice's court of the town of Wellsville. Summons returnable on the 12th day of November, 1896, and answer served on the 1st day of December, 1896. The names of the original parties in full are Albert L. Purdy, plaintiff, and Erie Railroad Company, defendant.

Action known as "B" was begun in justice's court, town of Wellsville. Summons returnable November 14th and answer put in December 1st, 1896. The names of the original parties in

6 full are Albert L. Purdy, plaintiff, and Erie Railroad Company, defendant.

The above actions Nos. 2 to 12 inclusive were consolidated by an order granted by Justice Childs on the 1st day of December, 1896, and were subsequently thereto known as consolidated action.

Action No. 13 was consolidated with the consolidated action by an order granted on the 28th day of April, 1897.

Actions Nos. 14 to 19 inclusive were consolidated with said consolidated action by an order granted on the 27th day of September, 1897.

The justice court actions known as "A" and "B" were removed from justice court and consolidated with the consolidated action by an order granted December 1st, 1896. There has been no change of parties or attorneys in the above-entitled actions or in the consolidated actions since the commencement thereof.

Supreme Court, County of Allegany.

ALBERT L. PURDY, Plaintiff,
against
ERIE RAILROAD COMPANY, Defendant.

To the above-named defendant:

You are hereby summoned to answer the complaint in this
7 action and to serve a copy of your answer on the plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service; and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Trial desired in the county of Allegany.

Dated the 27th day of June, 1896.

A. L. PURDY,
Plaintiff's Attorney in Person.

Office and post-office address, Wellsville, Allegany county, N. Y.

Supreme Court, Allegany County.

ALBERT L. PURDY, Plaintiff,
against
ERIE RAILROAD COMPANY, Defendant.

The above-named plaintiff, for a cause of action herein against the above-named defendant, alleges:

First. Upon information and belief, that the said defendant is a domestic railroad corporation, duly organized under the laws
8 of the State of New York, for the purpose of engaging in the carrying of freight and passengers for hire, as a common carrier.

Second. That at the time hereinafter set forth, said defendant was, and now is, operating a railroad, in the State of New York, the line of which, and the lines of which, are more than one hundred miles in length and which is authorized by law to charge a maximum fare of more than two cents per mile and not more than three cents per mile, to wit: three cents per mile and which does charge and did charge, at the time herein set forth, a maximum fare of more than two cents per mile, for the transportation of passengers.

Third. That the said lines of the said railroad so operated by the defendant extend through, within the corporate limits of the village of Wellsville, a village duly incorporated under the laws of the State of New York and situate in the county of Allegany, said State, and that said defendant had, prior to the time hereinafter set forth, established a station, on its said line, in said incorporated village of Wellsville, for the accommodation of its passengers and in such station established a ticket office, within which ticket office said defendant kept a ticket agent stationed, for the regular sale of tickets to passengers for carriage upon its said line and lines of rail-

road, and that said station and ticket office were so maintained, for such purpose by said defendant at the time hereinafter set forth and tickets regularly sold thereat for such carriage, on its said lines.

Fourth. The plaintiff further alleges, that upon the 26th
9 day of June, 1896, this plaintiff duly made application to the said defendant, at its said ticket office, in the said incorporated village of Wellsville, of its ticket agent therein, acting as such and in charge thereof, for a mileage book, having one thousand coupons attached thereto and demanded that the defendant issue to the plaintiff or to the plaintiff and family such mileage book, required to be kept for sale thereat, by the provisions of an act entitled "An act in relation to the issues of mileage books by railroad corporations," constituting chapter 1027 of the Laws of 1895, as amended by chapter 835 of the Laws of 1896 of the State of New York. That at the same time, with such application and demand for such mileage book, plaintiff duly tendered to said defendant the sum of twenty dollars, lawful money of the United States, to pay for such mileage book by handing said money to and offering the same to said ticket agent within said ticket office at the place so established. That said defendant, in violation of the provisions of said act, refused to issue such mileage book to plaintiff and did not and would not issue or offer to issue the same when requested and demanded. The plaintiff further alleges, upon information and belief, that the said defendant did not at said time and does not now keep such mileage book for sale at its said ticket office as required. All against the form of the said statute, section 1 of chapter 1027 of the Laws of 1895, as amended by section 1 of chapter 835 of the Laws of 1896.

Fifth. That by such refusal to issue said mileage book the said defendant forfeited and became liable to pay to the plaintiff
10 the sum of fifty dollars, and which the plaintiff thereby became entitled to recover of the said defendant, and the defendant thereby became indebted to the plaintiff in said sum of $50 and to recover which sum so forfeited under said statute for such refusal this action is brought, which is plaintiff's damages therefor and which remains wholly unpaid. That one year has not elapsed since said cause of action accrued to plaintiff.

Wherefore the plaintiff demands judgment against the defendant for the sum of fifty dollars and interest from this date, besides the costs of this action.

Dated June 27, 1896.

A. L. PURDY,
Plaintiff's Attorney in Person.

Office and post-office address, Wellsville, N. Y.

ALLEGANY COUNTY, *ss:*

Albert L. Purdy, being duly sworn, says that he is the plaintiff in the above-entitled action and that he has read the foregoing complaint and that the same is true to the knowledge of the deponent

except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

ALBERT L. PURDY.

Subscribed and sworn to before me this 27th day of June, 1896.

JOHN W. BLACKBURN,
Notary Public.

11 Supreme Court, County of Allegany.

ALBERT L. PURDY, Plaintiff,
against
ERIE RAILROAD COMPANY, Defendant. } Action No. "2."

To the above-named defendant:

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer on the plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service; and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Trial desired in the county of Allegany.

Dated the 29th day of June, 1896.

A. L. PURDY,
Plaintiff's Attorney in Person.

Office and post-office address, Wellsville, Allegany county, N. Y.

12 Supreme Court, Allegany County, State of New York.

ALBERT L. PURDY, Plaintiff,
against
ERIE RAILROAD COMPANY, Defendant. } Action No. "2."

The above-named plaintiff, for a cause of action, herein, against the above-named defendant, alleges:

First. Upon information and belief, that the said defendant is a domestic railroad corporation, duly organized under the laws of the State of New York, for the purpose of conveying persons and property for hire, as common carriers.

Second. That at the time hereinafter set forth, said defendant was, and now is, operating a railroad in the State of New York, the line of which and the lines of which are more than one hundred miles in length and which is authorized by law to charge a maximum fare of more than two cents per mile and not more than three cents per mile, to wit: three cents per mile; and which does charge and did charge at the time herein set forth a maximum fare of more than two cents per mile for conveying passengers.

Third. That the said lines of the said railroad so operated by the defendant extend through, within the corporate limits of the village of Wellsville, a village duly incorporated under the laws of the

State of New York and situate in the county of Allegany,
13 said State, and that said defendant had, prior to the time hereinafter set forth, established a station on its said line, in said incorporated village of Wellsville, for the accommodation of its passengers, and in such station established a ticket office, within which ticket office said defendant kept a ticket agent stationed for the regular sale of tickets to passengers for carriage upon its said line and lines of railroad, and that said station and ticket office were so maintained for such purpose by said defendant at the time hereinafter set forth and tickets regularly sold thereat for such carriage on its said lines.

Fourth. The plaintiff further alleges that upon the 29th day of June, 1896, this plaintiff duly made application to the said defendant at its said ticket office in said village of Wellsville of its ticket agent therein, acting as such and in charge thereof for a mileage book, having one thousand coupons attached thereto and demanded that the defendant issue to the plaintiff such mileage book, required to be kept for sale thereat by the provisions of an act entitled "An act in relation to the issue of mileage books by railroad corporations," constituting chapter 1027 of the Laws of 1895, as amended by chapter 835 of the Laws of 1896 of the State of New York. That at the same time with such application and demand for such mileage book, plaintiff duly tendered to said defendant the sum of twenty dollars, lawful money of the United States, to pay for such mileage book by handing said money to and offering the same to said ticket agent within said ticket office at the place so established. That plaintiff was then and now is ready and willing to pay said sum therefor. That
14 said defendant, in violation of the provisions of said act, refused to issue such mileage book to plaintiff, and did not and would not issue or offer to issue the same when requested and demanded. The plaintiff further alleges upon information and belief that the said defendant did not at said time and does not now keep such mileage books for sale at its said ticket office as required. All against the form of the said statute.

Fifth. That by such refusal to issue said mileage book to plaintiff on his application, as set forth above, the said defendant forfeited and became liable to pay to the plaintiff the sum of fifty dollars, and which sum the plaintiff thereby became entitled to recover of the said defendant therefor, and the defendant thereby became indebted to the plaintiff in said sum of $50, which is plaintiff's damages herein, and to recover which sum so forfeited under said statute for such refusal this action is brought.

Sixth. That said sum of fifty dollars remains wholly unpaid.

Seventh. That one year has not elapsed since said cause of action accrued to the plaintiff.

Wherefore the plaintiff demands judgment against the defendant

for the sum of fifty dollars and interest from this date, besides the costs of this action.

Dated June 29th, 1896.

A. L. PURDY,
Plaintiff's Attorney in Person.

Office and post-office address, Wellsville, Allegany county, N. Y.

15 ALLEGANY COUNTY, *ss:*

Albert L. Purdy, being duly sworn, says that he is the plaintiff in the above-entitled action and that he has read the foregoing complaint and that the same is true to the knowledge of the deponent, except as to the matters therein stated to be alleged on information and belief and that as to those matters he believes it to be true.

A. L. PURDY.

Subscribed and sworn to before me this 29th day of June, 1896.

E. A. CHILDS,
Notary Public.

Supreme Court, County of Allegany.

ALBERT L. PURDY, Plaintiff,
against
ERIE RAILROAD COMPANY, Defendant. } Action No. "3."

To the above-named defendant:

You are hereby summoned, to answer the complaint in this action, and to serve a copy of your answer on the plaintiff's attorney within twenty days after the service of this summons, exclusive of
16 the day of service; and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Trial desired in county of Allegany.

Dated the 1st day of July, 1896.

A. L. PURDY,
Plaintiff's Attorney in Person.

Office and post-office address, Wellsville, N. Y.

Supreme Court, Allegany County, State of New York.

ALBERT L. PURDY, Plaintiff,
against
ERIE RAILROAD COMPANY, Defendant. } Action Number "3."

The above-named plaintiff, for a cause of action, herein, against the above-named defendant, alleges:

First. Upon information and belief, that the said defendant is a domestic railroad corporation, duly organized under the laws of this State, for the carriage of persons and property for hire, as common carriers.

17 Second. That at the time hereinafter set forth, said defendant was, and now is, operating a railroad in this State, the lines of which are more than one hundred miles in length and which is authorized by law to charge a maximum fare of more than two cents per mile and not more than three cents per mile, to wit, three cents per mile; and which does charge and did charge at the time herein set forth a maximum fare of more than two cents per mile for conveying passengers on its said lines.

Third. That Wellsville is a village, duly incorporated under the laws of this State, in the county of Allegany. That defendant's said lines extend through said village. That defendant had, prior to the time herein set forth, established a ticket office for the regular sale of tickets to its passengers, for transportation on its said lines, at its station on said lines and in said incorporated village of Wellsville and then maintained the same for such purpose and by its ticket agent therein employed, regularly selling tickets, thereat, for such transportation.

Fourth. That upon the first day of July, 1896, this plaintiff duly made application to said defendant, at its said ticket office in said village of Wellsville, of its ticket agent therein, acting as such and in charge thereof, for a mileage book having one thousand coupons attached thereto and demanded that the defendant issue to the plaintiff such mileage book, required to be kept for sale thereat, by the provisions of an act, entitled "An act in relation to the issue of mileage books by railroad corporations," constituting chapter 1027 of the Laws of 1895, as amended by chapter 835 of the Laws

18 of 1896. That at the same time with such application and demand for such mileage book, plaintiff duly tendered to said defendant the sum of twenty dollars, lawful money of the United States, to pay for such mileage book, by handing the same and offering it to said ticket agent, within said office, at the place so established. That plaintiff was then, and now is, ready and willing to pay said sum for such mileage book. That said defendant, in violation of the provisions of said act and of its duty thereunder, refused to issue such mileage book to plaintiff, and did not and would not issue or offer*ed* to issue such mileage book to plaintiff, when requested and demanded. Plaintiff further alleges upon information and belief that the said defendant did not at said time and does not now keep such mileage books for sale at its said ticket office, as required. All against the form of the said statute.

Fifth. That by such refusal to issue such mileage book to plaintiff, on his application, as aforesaid, the said defendant forfeited and became liable to pay to the plaintiff the sum of fifty dollars and which sum the plaintiff, thereby, became entitled to recover of the said defendant, therefor, and the defendant, thereby, became indebted to the plaintiff in said sum of $50, which is plaintiff's damages, herein, and to recover which sum so forfeited, under said statute for such refusal, this action is brought.

Sixth. That said sum of fifty dollars remains wholly unpaid.

Seventh. That one year has not elapsed since said cause of action accrued to the plaintiff.

19 Wherefore, the plaintiff demands judgment against the defendant for the sum of fifty dollars and interest from this date, besides the costs of this action.

Dated July 1st, 1896.

A. L. PURDY,
Plaintiff's Attorney in Person.

Office and post-office address, Wellsville, Allegany county, N. Y.

ALLEGANY COUNTY, ss:

Albert L. Purdy, being duly sworn, says that he is the plaintiff in the above-entitled action; and that he has read the foregoing complaint and knows the contents thereof and that the same is true to the knowledge of deponent, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

A. L. PURDY.

Subscribed and sworn to before me this 1st day of July, 1896.
H. J. TORREY,
Notary Public.

20 Supreme Court, County of Allegany.

ALBERT L. PURDY, Plaintiff,
against
ERIE RAILROAD COMPANY, Defendant. } Action No. "4."

To the above-named defendants:

You are hereby summoned, to answer the complaint in this action and to serve a copy of your answer on the plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service; and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Trial desired in the county of Allegany.

Dated, the 3rd day of July, 1896.

A. L. PURDY,
Plaintiff's Attorney in Person.

Office and post-office address, Wellsville, Allegany county, N. Y.

21 Supreme Court, State of New York, Allegany County.

ALBERT L. PURDY, Plaintiff,
against
ERIE RAILROAD COMPANY, Defendant. } Action No. "4."

The above-named plaintiff, for a cause of action, herein, against the above-named defendant, alleges:

First. Upon information and belief, that the said defendant is a domestic railroad corporation, duly organized under the laws of this

State, for the carriage of persons and property for hire as a common carrier.

Second. That at the time hereinafter set forth, said defendant was, and now is, operating a railroad in this State, the lines of which are more than one hundred miles in length and which is authorized by law to charge a maximum fare of more than two cents per mile and not more than three cents per mile; to wit, three cents per mile; and which does charge and did charge, at the time herein set forth, a maximum fare of more than two cents per mile for conveying passengers on its said lines.

Third. That Wellsville is a village, duly incorporated under the laws of this State, in the county of Allegany. That said defendant's said lines extend through said village. That said defendant had, prior to the time herein set forth, established a ticket office for the regular sale of tickets to its passengers, for transportation on
22 its said lines, at its station on said lines and in said incorporated village of Wellsville and then maintained the same for such purpose and by its ticket agent therein employed, regularly, selling tickets, thereat, for such transportation.

Fourth. That upon the 3rd day of July, 1896, this plaintiff duly made application to said defendant, at its said ticket office in said village of Wellsville, of its ticket agent, therein acting as such and in charge thereof, for a mileage book, having one thousand coupons attached thereto, entitling the holder thereof to travel one thousand miles on the line or lines of such railroad, and demanded that the defendant issue to the plaintiff such mileage book, required to be kept for sale, thereat, by the provisions of an act, entitled, "An act in relation to the issue of mileage books by railroad corporations," constituting chapter 1027 of the Laws of 1895, as amended by chapter 835 of the Laws of 1896. That at the same time, with such application and demand for such mileage book, plaintiff duly tendered to said defendant the sum of *twenty* dollars, lawful money of the United States, to pay for such mileage book, by handing the same and offering it to said ticket agent, within said office, at the place so established. That the plaintiff was, then, and now is, ready and willing to pay said sum for such mileage book. That said defendant, in violation of the provisions of said act and of its duty thereunder, refused to issue such mileage book to plaintiff and did not and would not issue or offer to issue such mileage book to plaintiff when requested or demanded. Plaintiff further alleges upon information and belief that the said defendant did not at said
23 time and does not now keep such mileage books for sale at its said ticket office, as required. All against the form of the said statute.

Fifth. That by such refusal to issue such mileage book to plaintiff, on his application, as aforesaid, the said defendant forfeited and became liable to pay to the plaintiff the sum of fifty dollars and which sum the plaintiff, thereby, became entitled to recover of the said defendant, therefor, and the said defendant, thereby, became indebted to the plaintiff in said sum of $50, which is plaintiff's damages herein, and to recover which sum so forfeited, under said

statute, for such refusal to issue said mileage book, this action is brought.

Sixth. That said sum of fifty dollars remains wholly unpaid.

Seventh. That one year has not elapsed since said cause of action accrued to the plaintiff.

Wherefore, the plaintiff demands judgment against the defendant for the sum of fifty dollars and interest from this date and the costs of this action.

Dated, July 3rd, 1896.

A. L. PURDY,
Plaintiff's Attorney in Person.

Office and post-office address, Wellsville, Allegany county, N. Y.

ALLEGANY COUNTY, ss:

24 Albert L. Purdy, being duly sworn, says that he is the plaintiff in the above-entitled action and that he has read the foregoing complaint and that the same is true, except as to the matters therein stated to be alleged on information and belief and that as to those matters he believes it to be true.

A. L. PURDY.

Subscribed and sworn — before me this 3rd day of July, 1896.

CALEB S. HALL,
Notary Public.

Supreme Court, County of Allegany.

ALBERT L. PURDY, Plaintiff,
against
ERIE RAILROAD COMPANY, Defendant. } Action No. "5."

To the above-named defendant:

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer on the plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service; and in case of your failure to appear or answer,

25 judgment will be taken against you by default for the relief demanded in the complaint.

Trial desired in the county of Allegany.

Dated the 11th day of July, 1896.

A. L. PURDY,
Plaintiff's Attorney in Person.

Office and post-office address, Wellsville, N. Y.

Supreme Court, State of New York, Allegany county.

ALBERT L. PURDY, Plaintiff,
against
ERIE RAILROAD COMPANY, Defendant. } Action No. "5."

The above-named plaintiff, for a cause of action herein against the above-named defendant, alleges:

First. Upon information and belief, that the said defendant is a domestic railroad corporation, duly organized under the laws of this State for the purpose of the carriage of persons and property for hire as a common carrier.

26 Second. That at the time hereinafter set forth said defendant was, and now is, operating a railroad in this State, the lines of which are more than one hundred miles in length and which is authorized by law to charge a maximum fare of more than two cents per mile and not more than three cents per mile, to wit: three cents per mile; and which does charge and did charge at the time herein set forth, a maximum fare of more than two cents per mile for conveying passengers on its said line.

Third. That Wellsville is a village duly incorporated under the laws of the State, in the county of Allegany. That said defendant's said lines extend through said village. That said defendant had, prior to the time herein set forth, established a ticket office for the regular sale of tickets to its passengers for transportation on its said lines at its station on said lines and in said incorporated village of Wellsville, and then maintained the same for such purpose and by its ticket agent therein employed regularly selling tickets thereat for such transportation.

Fourth. That upon the 10th day of July, 1896, this plaintiff duly made application to said defendant at its said ticket office in said village of Wellsville of its ticket agent therein, acting as such and in charge thereof, for a mileage book having one thousand coupons attached thereto, entitling the holder thereof to travel one thousand miles on the line or lines of such railroad, and demanded that the defendant issue to the plaintiff such mileage book, required to be kept for sale thereat by the provision of an act, entitled "An act in relation to the issue of mileage books by railroad corpora-

27 tions," constituting chapter 1027 of the Laws of 1895, as amended by chapter 835 of the Laws of 1896. That at the same time with such application and demand for such mileage book, plaintiff duly tendered to said defendant the sum of twenty dollars, lawful money of the United States, to pay for such mileage book by handing the same to said ticket agent within said ticket office at the place so established. That plaintiff was then and now is ready and willing to pay said sum for such mileage book. That said defendant, in violation of the provisions of said act and of its duty thereunder, refused to issue such mileage book to plaintiff, and did not and would not issue or offer to issue such mileage book to plaintiff on such application and demand. Plaintiff further alleges on information and belief that the said defendant did not at said time and

does not now keep such mileage books for sale at its said ticket office as required. All against the form of the said statute.

Fifth. That by such refusal to issue such mileage book to plaintiff on his application, as aforesaid, the said defendant forfeited and became liable to pay to the plaintiff the sum of fifty dollars, and which sum the plaintiff thereby became entitled to recover of the said defendant therefor, and the said defendant thereby became indebted to the plaintiff in said sum of $50, which is plaintiff's damages herein, and to recover which sum so forfeited under said statute for such refusal to issue said mileage book this action is brought.

Sixth. That said sum of fifty dollars remains wholly unpaid.

28 Seventh. That one year has not elapsed since said cause of action accrued to the plaintiff.

Wherefore the plaintiff demands judgment against the defendant for the sum of fifty dollars and interest from this date and costs of this action.

Dated July 11th, 1896.

A. L. PURDY,
Plaintiff's Attorney in Person.

Office and post-office address, Wellsville, Allegany county, N. Y.

ALLEGANY COUNTY, *ss:*

Albert L. Purdy, being duly sworn, says that he is the plaintiff in the above-entitled action, and that the foregoing complaint is true to the knowledge of deponent, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

A. L. PURDY.

Subscribed and sworn to before me this 11th day of July, 1896.
CHARLES R. SCOTT,
Notary Public.

29 Supreme Court, County of Allegany.

ALBERT L. PURDY, Plaintiff,
against
ERIE RAILROAD COMPANY, Defendant. } Action No. "6."

To the above-named defendants:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer on the plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service; and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Trial desired in the county of Allegany.

Dated the 12th day of August, 1896.

A. L. PURDY,
Plaintiff's Attorney in Person.

Office and P. O. address, Wellsville, Allegany Co., N. Y.

30 Supreme Court, State of New York, Allegany County.

ALBERT L. PURDY, Plaintiff,
against
ERIE RAILROAD COMPANY, Defendant. } Action No. "6."

The above-named plaintiff, for a cause of action herein against the above-named defendant, alleges:

First. Upon information and belief, that the said defendant is a domestic railroad corporation, duly organized under the laws of this State, for the purpose of the carriage of persons and property for hire as a common carrier.

Second. That at the time hereinafter set forth said defendant was, and now is, operating a railroad in this State, the lines of which are more than one hundred miles in length and which is authorized by law to charge a maximum fare of more than two cents per mile, and not more than three cents per mile, to wit: three cents per mile; and which does charge and did charge, at the time set forth, a maximum fare of more than two cents per mile for conveying passengers on its said lines.

Third. That Wellsville is a village duly incorporated under the laws of this State, in the county of Allegany. That said defendant's said lines extend through said village. That said defendant
31 had, prior to the time herein set forth, established a ticket office for the regular sale of tickets to its passengers, for transportation on its said lines, at its station on said lines and in said incorporated village of Wellsville and there maintained the same for such purpose and by its ticket agent therein employed, regularly, selling tickets thereat for such transportation.

Fourth. That upon the 12th day of August, 1896, this plaintiff duly made application of said defendant, at its said ticket office, in said village, to its ticket agent therein, acting as such and in charge thereof, for a mileage book, having one thousand coupons attached thereto, entitling the holder thereof to travel one thousand miles on the line or lines of such railroad and demanded that the defendant issue to the plaintiff such mileage book, required to be kept for sale, thereat, by the provisions of an act, entitled "An act in relation to the issues of *village* books by railroad corporations," constituting chapter 1027 of the Laws of 1895; as amended by chapter 835 of the Laws of 1896. That at the same time with such application and demand for such mileage book, plaintiff duly tendered to said defendant the sum of twenty dollars, lawful money of the United States, to pay for such mileage book, by offering the same to said ticket agent at the place where tickets were delivered, within said ticket office, in the place so established. That plaintiff was then, and now is, ready and willing to pay said sum for such mileage book. That said defendant, in violation of the provisions of said act and of its duty thereunder, refused to issue such mileage book to plaintiff and did not and would not issue or offer to issue such mileage book
32 to plaintiff, on such application and demand. Plaintiff further alleges on information and belief that the said defendant did

not at said time and does not now keep such mileage books for sale at the said ticket office as required.

Fifth. That by such refusal to issue such mileage book to plaintiff, on his application as aforesaid, the said defendant forfeited and became liable to pay to the plaintiff the sum of fifty dollars and which sum the plaintiff thereby became entitled to recover of the said defendant therefor, and the said defendant thereby became indebted to the plaintiff in said sum of $50, which is plaintiff's damages herein, and to recover which sum so forfeited under said statute, for such refusal to issue said mileage book, this action is brought.

Sixth. That said sum of fifty dollars remains wholly unpaid.

Seventh. That one year has elapsed since said cause of action accrued to the plaintiff. Therefore, the plaintiff demands judgment against the defendant for the sum of fifty dollars and interest from this date, and costs of this action.

Dated August 12th, 1896.

A. L. PURDY,
Plaintiff's Attorney in Person.

Office and P. O. address, Wellsville, Allegany Co., N. Y.

33 ALLEGANY COUNTY, *ss:*

Albert L. Purdy, being duly sworn, says that he is the plaintiff in the above-entitled action, and that the foregoing complaint is true to the knowledge of deponent, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

A. L. PURDY.

Sworn — before me this 12th day of August, 1896.

CALEB S. HALL,
Notary Public.

Supreme Court, County of Allegany.

ALBERT L. PURDY, Plaintiff,
against
ERIE RAILROAD COMPANY, Defendant. } Action No. "7."

To the above-named defendant:

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer on the plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service; and in case of your failure to appear or answer,
34 judgment will be taken against you by default for the relief demanded in the complaint.

Trial desired in the county of Allegany.

Dated the 15th day of August, 1896.

A. L. PURDY,
Plaintiff's Attorney in Person.

Office and post-office address, Wellsville, Allegany county, N. Y.

Supreme Court, State of New York, Allegany County.

ALBERT L. PURDY, Plaintiff,
against
ERIE RAILROAD COMPANY, Defendant. } Action No. "7."

The above-named plaintiff, for a cause of action herein against the above-named defendant, alleges:

First. Upon information and belief, that the said defendant is a domestic railroad corporation, duly organized under the laws of the State of New York, for the purpose of the carriage of persons and property for hire as a common carrier.

35 Second. That at the time hereinafter set forth said defendant was, and now is, operating a railroad in this State, the lines of which are more than one hundred miles in length, and which is authorized by law to charge a maximum fare of more than two cents per mile and not more than three cents per mile, to wit: three cents per mile; and which does charge and did charge, at the time herein set forth, a maximum fare of more than two cents per mile for conveying passengers on its said lines.

Third. That Wellsville is a village, duly incorporated under the laws of this State, in the county of Allegany. That said defendant's said lines extend through said village; that said defendant had, prior to the time herein set forth, established a ticket office for the regular sale of tickets to its passengers for transportation on its said lines, at its said station, and in said incorporated village of Wellsville, and then maintained the same for such purpose and by its ticket agent therein employed regularly selling tickets thereat for such transportation.

Fourth. That upon the 15th day of August, 1896, this plaintiff duly made application to said defendant, at its said ticket office in said village of Wellsville, of its ticket agent therein employed, acting as such and in charge thereof, for a mileage book having one thousand coupons attached thereto, entitling the holder thereof to travel one thousand miles on the lines of its railroad, and demanded that the defendant issue to the plaintiff such mileage book, required

36 to be kept for sale thereat by the provisions of an act entitled "An act in relation to the issue of mileage books by railroad corporations," constituting chapter 1027 of the Laws of 1895, as amended by chapter 835 of the Laws of 1896. That at the same time with such application and demand for such mileage book, plaintiff duly tendered to said defendant the sum of twenty dollars, lawful money of the United States, to pay for the same by handing said sum to the said ticket agent within said ticket office at the place so established. That plaintiff was then and now is ready and willing to pay said sum for such mileage book. That said defendant, in violation of the provisions of said act and of its duty thereunder, refused to issue such mileage book to plaintiff, and did not and would not issue or offer to issue such mileage book to plaintiff on such application and demand. Plaintiff further alleges on information and belief that the said defendant did not at said time and

does not now keep such mileage books for sale at its said ticket office as required. All against the form of the said statute.

Fifth. That by such refusal to issue such mileage book to plaintiff on his application, as aforesaid, the said defendant forfeited and became liable to pay to the plaintiff the sum of fifty dollars, and which sum the plaintiff thereby became entitled to recover of the said defendant therefor, and the said defendant thereby became indebted to the plaintiff in said sum of $50, which is plaintiff's damages herein, and to recover which sum so forfeited under said statute for such refusal to issue said mileage book this action is brought.

Sixth. That said sum of fifty dollars remains wholly unpaid.

37 Seventh. That one year has not elapsed since said cause of action accrued to the plaintiff.

Wherefore the plaintiff demands judgment against the defendant for the sum of fifty dollars and interest from this date and costs of this action.

Dated August 15, 1896.

A. L. PURDY,
Plaintiff's Attorney in Person.

Office and post-office address, Wellsville, Allegany county, N. Y.

ALLEGANY COUNTY, ss:

Albert L. Purdy, being duly sworn, says that he is the plaintiff in the above-entitled action and that the foregoing complaint is true to the knowledge of deponent, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

A. L. PURDY.

Subscribed and sworn to before me this 15th day of August, 1896.

CALEB S. HULL,
Notary Public.

38 Supreme Court, County of Allegany.

ALBERT L. PURDY, Plaintiff,
against
ERIE RAILROAD COMPANY, Defendant. } Action No. "8."

To the above-named defendant:

You are hereby summoned, to answer the complaint in this action, and to serve a copy of your answer on the plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service; and in case of your failure to appear or answer, judg-

ment will be taken against you by default for the relief demanded in the complaint.

Trial desired in the county of Allegany.

Dated the 22nd day of August, 1896.

A. L. PURDY,
Plaintiff's Attorney in Person.

Office and post-office address, Wellsville, Allegany county, N. Y.

39 Supreme Court, Allegany County, State of New York.

ALBERT L. PURDY, Plaintiff,
against
ERIE RAILROAD COMPANY, Defendant. } Action No. "8."

The above-named plaintiff for a cause of action, herein, against the above-named defendant, alleges:

First. Upon information and belief, that the said defendant is a domestic railroad corporation, duly organized under the laws of this State for the purpose of the carriage of persons and property for hire, as a common carrier.

Second. That at the time hereinafter set forth said defendant was, and now is, operating a railroad in this State the lines of which are more than one hundred miles in length and which is authorized by law to charge a maximum fare of more than two cents per mile and not more than three cents per mile (to wit, three cents per mile), and which does charge and did charge, at the time herein set forth, a maximum fare of more than two cents per mile for conveying passengers on its said lines.

Third. That Wellsville is a village, duly incorporated under the laws of this State, in the county of Allegany. That said defendant's said lines extend through said village. That said defendant had, prior to the time herein set forth, established a ticket office
40 for the regular sale of tickets to its passengers, for transportation on its said lines, at its said station and in said incorporated village of Wellsville and then maintained the same for such purpose and regularly sold tickets, thereat, for such transportation.

Fourth. That upon the 22nd day of August, 1896, this plaintiff duly made application to said defendant, at its said ticket office, in said village of Wellsville, to its ticket agent, therein, acting as such and in charge thereof, for a mileage book, having one thousand coupons attached thereto, entitling the holder thereof to travel one thousand miles on the lines of such railroad, and demanded that the defendant issue to the plaintiff such mileage book, required to be kept for sale, thereat, by the provisions of an act, entitled "An act in relation to the issue of mileage books by railroad corporations," constituting chapter 1027 of the Laws of 1895, as amended by chapter 835 of the Laws of 1896. That at the same time, with such application and demand for such mileage book, plaintiff duly tendered to said defendant the sum of twenty dollars, lawful money of the United States, to pay for such mileage book, by handing the same

and offering it to said ticket agent, within said office, at the place so established. That plaintiff was then, and now is, ready and willing to pay said sum for such mileage book. That said defendant, in violation of the provisions of said act, and of its duty thereunder, refused to issue such mileage book to plaintiff, and did not and would not issue or offer to issue such mileage book to plaintiff, when requested and demanded. Plaintiff further alleges upon information and belief that the said defendant did not at said time
41 and does not now keep such mileage books for sale at its said ticket office, as required. All against the form of the said statute.

Fifth. That by such refusal to issue such mileage book to plaintiff on his application, as aforesaid, the said defendant forfeited and became liable to pay to the plaintiff the sum of fifty dollars and which sum the plaintiff, thereby, became entitled to recover of the said defendant, therefor, and the said defendant, thereby became indebted to the plaintiff in said sum of $50, which is plaintiff's damages, herein, and to recover which sum so forfeited, under said statute, for such refusal to issue such mileage book, this action is brought.

Sixth. That said sum of fifty dollars remains wholly unpaid.

Seventh. That one year has not elapsed since said cause of action accrued to the plaintiff.

Wherefore, the plaintiff demands judgment against the defendant for the sum of fifty dollars and interest from this date and costs of this action.

Dated August 22nd, 1896.

A. L. PURDY,
Plaintiff's Attorney in Person.

Office and post-office address, Wellsville, Allegany county, N. Y.

42 ALLEGANY COUNTY, *ss:*

Albert L. Purdy, being duly sworn, says that he is the plaintiff in the above-entitled action and that he has read the foregoing complaint and that the same is true to the knowledge of deponent, except as to the matters therein stated to be alleged on information and belief and that as to those matters he believes it to be true.

A. L. PURDY.

Subscribed and sworn — before me, this 22nd day of August, 1896.

CLAUDE R. GROTE,
Notary Public.

Supreme Court, County of Allegany.

ALBERT L. PURDY, Plaintiff,
against
ERIE RAILROAD COMPANY, Defendant. } Action No. "9."

To the above-named defendant:

You are hereby summoned, to answer the complaint in this action, and to serve a copy of your answer on the plaintiff's attorney within twenty days after the service of the summons, exclusive of the day of service; and in case of your failure to appear or answer,
43 judgment will be taken against you by default for the relief demanded in the complaint.

Trial desired in the county of Allegany.

Dated the 25th day of August, 1896.

A. L. PURDY,
Plaintiff's Attorney in Person.

Office and P. O. address, Wellsville, Allegany Co., N. Y.

Supreme Court, Allegany County, State of New York.

ALBERT L. PURDY, Plaintiff,
against
ERIE RAILROAD COMPANY, Defendant. } Action No. "9."

The above-named plaintiff, for a cause of action, herein, against the above-named defendant, alleges:

First. Upon information and belief, that the said defendant is a domestic railroad corporation, duly organized under the laws of this State for the purpose of the carriage of persons and property for hire, as a common carrier.

44 Second. That at the time hereinafter set forth said defendant was, and now is, operating a railroad in this State, the lines of which are more than one hundred miles in length and which is authorized by law to charge a maximum fare of more than two cents per mile and not more than three cents per mile (to wit, three cents per mile), and which does charge and did charge, at the time herein set forth, a maximum fare of more than two cents per mile for conveying passengers on its said lines.

Third. That Wellsville is a village, duly incorporated under the laws of this State, in the county of Allegany. That said defendant's said lines extend through said village. That said defendant had, prior to the time herein set forth, established a ticket office for the regular sale of tickets to its passengers, for transportation on its said lines, at its said station and in said incorporated village of Wellsville, and then maintained the same for such purpose and regularly sold tickets thereat for such transportation.

Fourth. That upon the 25th day of August, 1896, this plaintiff duly made application to said defendant, at its ticket office in said village of Wellsville, to its ticket agent therein, acting as such and

in charge thereof, for a mileage book, having one thousand coupons attached thereto, entitling the holder thereof to travel one thousand miles on the lines of such railroad, and demanded that the defendant issue to the plaintiff such mileage book, required to be kept for sale, thereat, by the provisions of an act, entitled, "An act in relation to the issue of mileage books by railroad corporations," constituting chapter 1027 of the Laws of 1895, as amended by chapter 835
45 of the Laws of 1896. That at the same time, with such application and demand for such mileage book, plaintiff duly tendered to said defendant the sum of twenty dollars, lawful money of the United States, to pay for such mileage book, by handing the same and offering it to said ticket agent, within said office, at the place so established. That plaintiff was then, and now is, ready and willing to pay said sum for such mileage book. That said defendant, in violation of the provisions of said act, and of its duty thereunder, refused to issue such mileage book to plaintiff, and did not and would not issue or offer to issue such mileage book to plaintiff, when requested and demanded. Plaintiff further alleges, upon information and belief, that the said defendant did not at said time and does not now keep such mileage books for sale at its said ticket office as required. All against the form of the said statute.

Fifth. That by such refusal to issue such mileage book to plaintiff on his application, as aforesaid, the said defendant forfeited and became liable to pay to the plaintiff the sum of fifty dollars and which sum the plaintiff, thereby, became entitled to recover of the said defendant therefor and the *same* defendant thereby became indebted to the plaintiff in said sum of $50, which is plaintiff's damages herein, and to recover which sum so forfeited, under said statute, for such refusal to issue such mileage book this action is brought.

Sixth. That said sum of fifty dollars remains wholly unpaid.

46 Seventh. That one year has not elapsed since said cause of action accrued to the plaintiff.

Wherefore, the plaintiff demands judgment against the defendant for the sum of fifty dollars and interest from the date and costs of this action.

Dated August 25, 1896.

A. L. PURDY,
Plaintiff's Attorney in Person.

Office and P. O. address, Wellsville, Allegany Co., N. Y.

ALLEGANY COUNTY, *ss*:

Albert L. Purdy, being duly sworn, says that he is the plaintiff in the above-entitled action and has read the foregoing complaint and that the same is true to the knowledge of deponent, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

A. L. PURDY.

Subscribed and sworn to before me this 25th day of August, 1896.

JOHN W. BLACKMAN,
Notary Public.

47 Supreme Court, County of Allegany.

ALBERT L. PURDY, Plaintiff,
against
ERIE RAILROAD COMPANY, Defendant. } Action No. "10."

To the above-named defendant:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer on the plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service; and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Trial desired in the county of Allegany.

Dated the 27th day of August, 1896.

A. L. PURDY,
Plaintiff's Attorney in Person.

Office and post-office address, Wellsville, Allegany county, N. Y.

48 Supreme Court, Allegany County, State of New York.

ALBERT L. PURDY, Plaintiff,
against
ERIE RAILROAD COMPANY, Defendant. } Action No. "10."

The above-named plaintiff, for a cause of action herein, against the above-named defendant, alleges:

First. Upon information and belief, that the said defendant is a domestic railroad corporation, duly organized under the laws of this State, for the purpose of the carriage of persons and property for hire, as a common carrier.

Second. That at the time hereinafter set forth said defendant was, and now is, operating a railroad in this State, the lines of which are more than one hundred miles in length and which is authorized by law to charge a maximum fare of more than two cents per mile and not more than three cents per mile (to wit, three cents per mile), and which does charge and did charge, at the time herein set forth, a maximum fare of more than two cents per mile for conveying passengers on its said lines.

Third. That Wellsville is village, duly incorporated under the laws of this State, in the county of Allegany. That said de-
49 fendant's said lines extend through said village. That said defendant had, prior to the time herein set forth, established a ticket office for the regular sale of tickets to its passengers, for transportation on its said lines, at its said station and in said incorporated

village of Wellsville, and then maintained the same for such purpose and regularly sold tickets, thereat for such transportation.

Fourth. That upon the 27th day of August, 1896, this plaintiff duly made application to said defendant, at its ticket office, in said village of Wellsville, to its ticket agent, therein, acting as such and in charge thereof, for a mileage book, having one thousand coupons attached thereto, entitling the holder thereof to travel one thousand miles on the lines of such railroad and demanded that the defendant issue to the plaintiff such mileage book, required to be kept for sale, thereat, by the provisions of an act, entitled "An act in relation to the issue of mileage books by railroad corporations," constituting chapter 1027 of the Laws of 1895, as amended by chapter 835 of the Laws of 1896. That at the same time with such application and demand for such mileage book, plaintiff duly tendered to said defendant the sum of twenty dollars, lawful money of the United States, to pay for such mileage book, by handing the same to and offering it to said ticket agent, within said office, at the place so established. That plaintiff was then, and now is, ready and willing to pay said sum for such mileage book. That said defendant, in violation of the provisions of said act and of its duty thereunder, refused to issue such mileage book to plaintiff and did not and would not issue or offer to issue the same, when requested
50 and demanded. Plaintiff further alleges, upon information and belief, that the said defendant did not, at said time, and does not now, keep such mileage books for sale at its said ticket office, as required. All against the form of the said statute.

Fifth. That by such refusal to issue such mileage book to the plaintiff, on his application, as aforesaid, the said defendant forfeited and became liable to pay to the plaintiff the sum of fifty dollars and which sum the plaintiff, thereby, became entitled to recover of the said defendant therefor, and the said defendant, thereby, became indebted to the plaintiff in said sum of $50, which is plaintiff's damages, herein, and to recover which sum, so forfeited, under said statute, for such refusal to issue such mileage book, this action is brought.

Sixth. That said sum of fifty dollars remains wholly unpaid.

Seventh. That one year has not elapsed since said cause of action accrued to the plaintiff.

Wherefore, plaintiff demands judgment against the defendant for the sum of fifty dollars and interest from this date and costs of this action.

Dated August 27th, 1896.

A. L. PURDY,
Plaintiff's Attorney in Person.

Office and post-office address, Wellsville, Allegany county, N. Y.

51 ALLEGANY COUNTY, *ss:*

Albert L. Purdy, being duly sworn, says that he is the plaintiff in the above-entitled action and that he has read the foregoing complaint and knows the contents thereof and that the same is true to

the knowledge of deponent except as to the matters therein stated to be alleged on information and belief and that as to those matters he believes it to be true.

A. L. PURDY.

Sworn — before me this 27th day of August, 1896.
JNO. W. BLACKMAN,
Notary Public.

Supreme Court, County of Allegany.

ALBERT L. PURDY, Plaintiff,
against
ERIE RAILROAD COMPANY, Defendant. } Action No. "11."

To the above-named defendant:

You are hereby summoned, to answer the complaint in this action and to serve a copy of your answer on the plaintiff's attorney within twenty days after the service of this summons, exclusive of
52 the day of service; and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Trial desired in the county of Allegany.

Dated the 29th day of October, 1896.

A. L. PURDY,
Plaintiff's Attorney.

Office and post-office address, Wellsville, Allegany county, N. Y.

Supreme Court, County of Allegany, State of New York.

ALBERT L. PURDY, Plaintiff,
against
ERIE RAILROAD COMPANY, Defendant. } Action No. "11."

The above-named plaintiff, for a cause of action, herein, against the above-named defendant, for his amended complaint, alleges:

First. Upon information and belief, that the said defendant is a domestic railroad corporation, duly organized under the laws of this State, for the purpose of the carriage of persons and property, for hire, as a common carrier.

53 Second. That at the time hereinafter set forth said defendant was, and now is, operating a railroad in this State, the lines of which are more than one hundred miles in length and which is authorized by law to charge a maximum fare of more than two cents per mile and not more than three cents per mile (to wit, three cents per mile), and which does charge and did charge, at the time herein set forth, a maximum fare of more than two cents per mile for conveying passengers on its said lines.

Third. That Wellsville is a village, duly incorporated under the laws of this State, in the county of Allegany. That said defendant's said lines extend through said village. That said defendant had,

prior to the time herein set forth, established a ticket office for the regular sale of tickets to its passengers, for transportation on its said lines, at its station and in said village, and then maintained the same for such purpose and regularly sold tickets, thereat, for such transportation.

Fourth. That upon the 31st day of August, 1896, this plaintiff duly made application to said defendant, at its ticket office, in said village of Wellsville, to its ticket agent, therein, acting as such and in charge thereof, for a mileage book, having one thousand coupons attached thereto, entitling the holder thereof to travel one thousand miles on the lines of such railroad upon surrendering at any ticket, office on said lines, coupons equal in number to the miles plaintiff or a member of his family wish- to travel, to a ticket entitling the holder to the same rights and privileges in respect to trans-
54 portation of person and property as the highest class ticket issued by defendant, and demanded that the defendant issue to the plaintiff such mileage book, required to be kept for sale, thereat, by the provisions of an act, entitled "An act in relation to the issue of mileage books by railroad corporations," constituting chapter 1027 of the Laws of 1895, as amended by chapter 835 of the Laws of 1896. That at the same time with such application and demand for such mileage book, plaintiff duly tendered to said defendant the sum of twenty dollars, lawful money of the United States, to pay for such mileage book, by handing the same to and offering it to said ticket agent, within said office, at the place so established. The plaintiff was then, and now is, ready and willing to pay said sum for such mileage book. That said defendant in violation of the provisions of said act and of its duty thereunder, refused to issue such mileage book to plaintiff and did not and would not issue or offer to issue the same, when requested and demanded. Plaintiff further alleges, upon information and belief, that the said defendant did not, at said time, and does not now, keep such mileage books for sale at its said ticket office, as required. All against the form of the said statute.

Fifth. That by such refusal to issue such mileage book to the plaintiff, on his application, as aforesaid, the said defendant forfeited and became liable to pay to the plaintiff the sum of fifty dollars and which sum the plaintiff thereby, became entitled to recover of the said defendant, therefor, and the said defendant, thereby, became indebted to the plaintiff in said sum of $50, which is plaintiff's dam-
ages herein, and to recover which sum, so forfeited, under
55 said statute, for such refusal to issue such mileage book, this action is brought.

Sixth. That said sum of fifty dollars remains wholly unpaid.

Seventh. That one year has not elapsed since said cause of action accrued to the plaintiff.

Wherefore, plaintiff demands judgment against the defendant for

the sum of fifty dollars and interest from this date, and costs of this action.

Dated November 20th, 1896.

A. L. PURDY,
Plaintiff's Attorney in Person.

Office and post-office address, Wellsville, Allegany county, N. Y.

ALLEGANY COUNTY, *ss*:

Albert L. Purdy, being duly sworn, says that he is the plaintiff in the above-entitled action and that he has read the foregoing complaint and knows the contents thereof, and that the same is true to the knowledge of deponent except as to the matters therein stated to be alleged on information and belief and that as to those matters he believes it to be true.

A. L. PURDY.

Sworn — before me this 29th day of November, 1896.

H. J. TORREY,
Notary Public.

56 Supreme Court, County of Allegany.

ALBERT L. PURDY, Plaintiff,
against
ERIE RAILROAD COMPANY, Defendant. } Action No. "12."

To the above-named defendant:

You are hereby summoned, to answer the complaint in this action, and to serve a copy of your answer on the plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service; and in case of your failure to appear or answer judgment will be taken against you by default for the relief demanded in the complaint.

Dated the 7th day of November, 1896.

Trial desired in the county of Allegany.

A. L. PURDY,
Plaintiff's Attorney.

Office and post-office address, Wellsville, Allegany county, N. Y.

57 Supreme Court, State of New York, Allegany County.

ALBERT L. PURDY, Plaintiff,
against
ERIE RAILROAD COMPANY, Defendant. } Action No. "12."

The above-named plaintiff, for a cause of action, herein, against the above-named defendant, alleges:

First. Upon *the* information and belief, that the said defendant is a domestic railroad corporation, duly organized under the laws of this State, for the purpose of the carriage of persons and property for hire, as a common carrier.

Second. That at the time hereinafter set forth said defendant was, and now is, operating a railroad in this State, the lines of which are more than one hundred miles in length and which is authorized by law to charge a maximum fare of more than two cents per mile and not more than three cents per mile (to wit, three cents per mile), and which does charge and did charge, at the time herein set forth, a maximum fare of more than two cents per mile for conveying passengers on its said lines.

Third. That Wellsville is a village, duly incorporated under the laws of this State, in the county of Allegany. That said defendant's said lines extend through said village. That said defendant had, prior to the time herein set forth, established a ticket office
58 for the regular sale of tickets to its passengers, for transportation on its said lines, at its station and in said village, and then maintained the same for such purpose and regularly sold tickets, thereat, for such transportation.

Fourth. That upon the 7th day of November, 1896, this plaintiff duly made application to said defendant, at its ticket office, in said village of Wellsville, to its ticket agent, therein, acting as such and in charge thereof, for a mileage book, having one thousand coupons attached thereto, entitling the holder thereof to travel one thousand miles on the lines of such railroad and demanded that the defendant issue to the plaintiff such mileage book, required to be kept for sale, thereat, by the provisions of an act entitled "An act in relation to the issue of mileage books by railroad corporations," constituting chapter 1027 of the Laws of 1895, as amended by chapter 835 of the Laws of 1896. That at the same time with such application and demand for such mileage book, plaintiff duly tendered to said defendant the sum of twenty dollars, lawful money of the United States, to pay for such mileage book, by handing the same to and offering it to said ticket agent, within said office, at the place so established. That plaintiff was, then, and now is, ready and willing to pay said sum for such mileage book. That said defendant in violation of the provisions of said act and of its duty thereunder, refused to issue such mileage book to plaintiff and did not and would not issue or offer to issue the same, when requested and demanded. Plaintiff further alleges, upon information and belief, that the said
59 defendant did not, at said time, and does not now, keep such mileage books for sale at its said ticket office, as required. All against the form of the said statute.

Fifth. That by such refusal to issue such mileage book to the plaintiff, on his application, as aforesaid, the said defendant forfeited and became liable to pay to the plaintiff the sum of fifty dollars and which sum the plaintiff, thereby, became entitled to recover of the said defendant, therefor, and the said defendant, thereby, became indebted to the plaintiff in said sum of $50, which is plaintiff's damages, herein, and to recover which sum, so forfeited, under said statute, for such refusal to issue such mileage book, this action is brought.

Sixth. That said sum of fifty dollars remains wholly unpaid.

Seventh. That one year has not elapsed since said cause of action accrued to the plaintiff.

Wherefore, plaintiff demands judgment against the defendant for the sum of fifty dollars and interest from this date, and costs of this action.

Dated Nov. 7th, 1896.

A. L. PURDY,
Plaintiff's Attorney.

Office and post-office address, Wellsville, Allegany county, N. Y.

60 ALLEGANY COUNTY, *ss:*

Albert L. Purdy, being duly sworn, says, that he is the plaintiff in the above-entitled action and that he has read the foregoing complaint and knows the contents thereof, and that the same is true to the knowledge of deponent except as to the matters therein stated to be alleged on information and belief and that as to those matters he believes it to be true.

A. L. PURDY.

Sworn — before me this 7th day of November, 1896.

H. J. TORREY,
Notary Public.

Supreme Court, Allegany County, State of New York.

ALBERT L. PURDY, Plaintiff,
against
ERIE RAILROAD COMPANY, Defendant. } Action Number 12.

The above-named plaintiff, for a cause of action, herein, against the above-named defendant, for his amended complaint, alleges:

61 First. Upon information and belief, that the said defendant is a domestic railroad corporation, duly organized under the laws of this State of New York, for the purpose of carriage of persons and property for hire, as a common carrier.

Second. That at the time hereinafter set forth, defendant was, and now is, operating a railroad in this State, the lines of which are more than one hundred miles in length and which is authorized by law to charge a maximum fare of more than two cents per mile and not more than three cents per mile (to wit, three cents per mile); and which does charge and did charge at the time herein set forth, a maximum fare of more than two cents per mile for conveying passengers on its said line.

Third. That Wellsville is a village duly incorporated under the laws of the State, in the county of Allegany. That said defendant's said lines extend through said village. That said defendant had, prior to the time herein set forth, established a ticket office for the regular sale of tickets to its passengers for transportation on its said lines at its station and in said village and then maintained the same for such purpose and regularly sold tickets thereat for such transportation.

Fourth. That upon the 7th day of November, 1896, this plaintiff duly made application to said defendant at its ticket office in said village of Wellsville to its ticket agent therein, acting as such and in charge thereof, for a mileage book having one thousand coupons attached thereto, entitling the holder thereof to travel one
62 thousand miles on the lines of such railroad, upon surrendering, at any ticket office on said lines, coupons equal in number to the miles plaintiff or a member of his family wish- to travel, to a ticket, entitling the holder to the same rights and privileges in respect to transportation of person and property, as the highest class ticket issued by defendant, and demanded that the defendant issue to the plaintiff such mileage book, required to be kept for sale thereat by the provisions of an act, entitled "An act in relation to the issue of mileage books by railroad corporations," constituting chapter 1027 of the Laws of 1895, as amended by chapter 835 of the Laws of 1896. That at the same time with such application and demand for such mileage book, plaintiff duly tendered to said defendant the sum of twenty dollars, lawful money of the United States, to pay for such mileage book by handing the same to and offering it to said ticket agent within said office at the place so established. That plaintiff was then and now is ready and willing to pay said sum for such mileage book. That said defendant, in violation of the provisions of said act and of its duty thereunder, refused to issue such mileage book to plaintiff, and did not and would not issue or offer to issue the same when requested and demanded. Plaintiff further alleges upon information and belief that the said defendant did not at said time and does not now keep such mileage books for sale at its said ticket office, as required. All against the form of such statute.

Fifth. That by such refusal to issue such mileage book to plaintiff on his application, as aforesaid, the said defendant forfeited
63 and became liable to pay to the plaintiff the sum of fifty dollars, and which sum the plaintiff thereby became entitled to recover of the said defendant therefor, and the said defendant thereby became indebted to the plaintiff in said sum of $50, which is plaintiff's damages herein, and to recover which sum so forfeited under said statute for such refusal to issue said mileage book this action is brought.

Sixth. That said sum of fifty dollars remains wholly unpaid.

Seventh. That one year has not elapsed since said cause of action accrued to the plaintiff.

Wherefore the plaintiff demands judgment against the defendant for the sum of fifty dollars and interest from this date, besides the costs of this action.

Dated November 20th, 1896.

A. L. PURDY,
Plaintiff's Attorney.

Office and post-office address, Wellsville, Allegany county, N. Y.

ALLEGANY COUNTY, *ss:*

Albert L. Purdy, being duly sworn, says that he is the plaintiff in the above-entitled action; and that he has read the foregoing complaint and knows the contents thereof and that the same is true to the knowledge of deponent, except as to the matters therein
64 stated to be alleged on information and belief and that as to those matters he believes it to be true.

A. L. PURDY.

Sworn — before me this 20th day of November, 1896.

H. J. TORREY,
Notary Public.

Summons.

Action to recover a forfeiture according to the provisions of chapter 1027 of the Laws of 1895, entitled "An act in relation to the issue of mileage books by railroad corporations," as amended by chapter 835 of the Law- of 1896, of fifty dollars.

ALLEGANY COUNTY, *Town of Wellsville,* } *ss:*

The People of the State of New York to any constable of said county, Greeting:

You are hereby commanded to summon Erie Railroad Company to appear before the undersigned, a justice of the peace of said town, on the 18th day of November, 1896, at one o'clock in the afternoon, at his office in the village of Wellsville, in said town, to answer the complaint of Albert L. Purdy in a civil action.

Given under my hand, this 12th day of November, 1896.

HIRAM J. TORREY,
Justice of the Peace.

65 Justice Court, Allegany County.

Before H. J. Torrey, Justice.

ALBERT L. PURDY, Plaintiff,
against
ERIE RAILROAD COMPANY, Defendant. } Action No. A.

The above-named plaintiff, for a cause of action, herein, against the above-named defendant, alleges:

First. Upon information and belief, that the said defendant is a domestic railroad corporation, duly organized under the laws of this State, for the purpose of the carriage of persons and property for hire, as a common carrier.

Second. That at the time hereinafter set forth, said defendant was, and now is, operating a railroad, in this State, the lines of which are more than one hundred miles in length and which is authorized by law to charge a maximum fare of more than two cents per mile and

not more than three cents per mile (to wit, three cents per mile), and which does charge and did charge, at the time herein set forth, a maximum fare of more than two cents per mile for conveying passengers on its said lines.

Third. That Wellsville is a village, duly incorporated under the laws of this State, in the county of Allegany. That said defendant's said lines extend through said village. That said defendant
66 had, prior to the time herein set forth, established a ticket office for the regular sale of tickets to its passengers, for transportation on its said lines, at its station and in said village, and then maintained the same for such purpose and regularly, sold tickets, thereat, for such transportation.

Fourth. That upon the twelfth (12th) day of November, 1896, this plaintiff duly made application to said defendant, at its ticket office, in said village of Wellsville, to its ticket agent, therein, acting as such and in charge thereof, for a mileage book, having one thousand coupons attached thereto, entitling the holder thereof to travel one thousand miles on the lines of such railroad, upon surrendering at any ticket office on said lines coupons equal in number to the miles plaintiff or a member of his family wish to travel, to a ticket entitling the holder to the same rights and privileges in respect to transportation of person and property as the highest class ticket issued by defendant, and demanded that the defendant issue to the plaintiff such mileage book, required to be kept for sale, thereat, by the provisions of an act, entitled, "An act in relation to the issue of mileage books by railroad corporations," constituting chapter 1027 of the Laws of 1895, as amended by chapter 835 of the Laws of 1896. That at the same time, with such application and demand for such mileage book, plaintiff duly tendered to said defendant the sum of twenty dollars, lawful money of the United States, to pay for such mileage book, by handing the same to and offering it to said ticket agent, within said office, at the place so established. That plaintiff was, then, and now is, ready and willing to
67 pay said sum for such mileage book. That said defendant in violation of the provisions of said act and of its duty thereunder, refused to issue such mileage book to plaintiff and did not and would not issue or offer to issue the same, when requested and demanded. Plaintiff further alleges upon information and belief, that the said defendant did not at said time and does not now, keep such mileage books for sale at its said ticket office, as required. All against the form of the said statute.

Fifth. That by such refusal to issue such mileage book to the plaintiff, on his application, as aforesaid, the said defendant forfeited and became liable to pay to the plaintiff the sum of fifty dollars and which sum the plaintiff, thereby, became entitled to recover of the said defendant, therefor, and the said defendant, thereby, became indebted to the plaintiff in said sum of $50, which is plaintiff's damages herein, and to recover which sum so forfeited, under said statute, for such refusal to issue such mileage book, this action is brought.

Sixth. That said sum of fifty dollars remains wholly unpaid.

Seventh. That one year has not elapsed since said cause of action accrued to the plaintiff.

Wherefore, plaintiff demands judgment against the defendant for the sum of fifty dollars and interest from this date and costs of this action.

Dated November 18th, 1896.

A. L. PURDY,
Plaintiff, Wellsvillle, Allegany County, N. Y.

68 *Summons.*

Action to recover a forfeiture according to the provisions of chapter 1027 of the Laws of 1896, entitled "An act in relation to the issue of mileage books by railroad corporations," as amended by chapter 835 of the Laws of 1896, of fifty dollars.

ALLEGANY COUNTY, } ss.:
Town of Wellsville, }

The People of the State of New York to any constable of said county, Greeting:

You are hereby commanded to summon Erie Railroad Company to appear before the undersigned, a justice of the peace of said town, on the 24th day of November, 1896, at one o'clock in the afternoon, at his office in the village of Wellsville in said town to answer the complaint of Albert L. Purdy in a civil action.

Given under my hand, this 14th day of November, 1896.

Signed by— HIRAM J. TORREY,
Justice of the Peace.

69 Justice Court, Allegany County, State of New York.

By H. J. Torrey, Justice.

ALBERT L. PURDY, Plaintiff, } Action No. B.
against
ERIE RAILROAD COMPANY, Defendant. }

The above-named plaintiff, for a cause of action, herein, against the above-named defendant, alleges:

First. Upon information and belief, that the said defendant is a domestic railroad corporation, duly organized under the laws of this State, for the purpose of the carriage of persons and property for hire as a common carrier.

Second. That at the time hereinafter set forth, said defendant, was, and now is, operating a railroad in this State, the lines of which are more than one hundred miles in length and which is authorized by law to charge a maximum fare of more than two cents per mile and not more than three cents per mile (to wit, three cents per mile), and which does charge and did charge, at the time herein set forth, a maximum fare of more than two cents per mile for conveying passengers on its said lines.

Third. That Wellsville is a village, duly incorporated under the

laws of this State, in the county of Allegany. That said de-
70 fendant's said lines extend through said village. That said defendant had, prior to the time herein set forth, established a ticket office for the regular sale of tickets to its passengers, for transportation on its said lines, at its station and in said village, and then maintained the same for such purpose and regularly sold tickets, thereat, for such transportation.

Fourth. That upon the 14th day of November, 1896, this plaintiff duly made application to said defendant, at its ticket office, in said village of Wellsville, to its ticket agent, therein, acting as such and in charge thereof, for a mileage book, having one thousand coupons attached thereto, entitling the holder thereof to travel one thousand miles on the lines of such railroad, upon surrendering at any ticket office on said lines coupons equal in number to the miles plaintiff or a member of his family wish- to travel, to a ticket entitling the holder to the same rights and privileges in respect to transportation of person and property as the highest class ticket issued by defendant and demanded that the defendant issue to the plaintiff such mileage book, required to be kept for sale, thereat, by the provisions of an act, entitled "An act in relation to the issue of mileage books by railroad corporations," constituting chapter 1027 of the Laws of 1895, as amended by chapter 835 of the Laws of 1896. That at the same time with such application and demand for such mileage book, plaintiff duly tendered to said defendant the sum of twenty dollars, lawful money of the United States, to pay for such mileage book by handing the same to and offering it to said ticket agent, within said office, at the place so established. That plaintiff was then,
71 and now is, ready and willing to pay said sum for such mileage book. That said defendant, in violation of the provisions of said act and of its duty thereunder, refused to issue such mileage book to plaintiff, and did not and would not issue or offer to issue the same, when requested and demanded. Plaintiff further alleges upon information and belief that the said defendant did not, at said time and does not now keep such mileage books for sale at its said ticket office, as required. All against the form of the said statute.

Fifth. That by such refusal to issue such mileage book to the plaintiff, on his application, as aforesaid, the said defendant forfeited and became liable to pay to the plaintiff the sum of fifty dollars and which sum the plaintiff, thereby, became entitled to recover of the said defendant therefor, and the defendant, thereby, became indebted to the plaintiff in said sum of $50, which is plaintiff's damages, herein, and to recover which sum so forfeited, under said statute for such refusal to issue such mileage book, this action is brought.

Sixth. That said sum of fifty dollars remains wholly unpaid.

Seventh. That one year has not elapsed since said cause of action accrued to the plaintiff.

Wherefore, plaintiff demands judgment against the defendant for the sum of fifty dollars and interest from this date, and costs of this action.

Dated November 24th, 1896.

(Signed) A. L. PURDY, *Plaintiff.*

72 Supreme Court, County of Allegany.

ALBERT L. PURDY, Plaintiff,
against
ERIE RAILROAD COMPANY, Defendant. } Action No. 13.

To the above-named defendant:

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer on the plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service; and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Trial desired in the county of Allegany.

Dated the 10th day of March, 1897.

A. L. PURDY,
Plaintiff's Attorney.

Office and post-office address, Wellsville, N. Y.

73 Supreme Court, Allegany County, State of New York.

ALBERT L. PURDY, Plaintiff,
against
ERIE RAILROAD COMPANY, Defendant. } Action No. 13.

The above-named plaintiff, for a cause of action, herein, against the above-named defendant, alleges:

First. Upon information and belief, that the said defendant is a domestic railroad corporation, duly organized under the laws of this State, for the purpose of the carriage of persons and property for hire, as a common carrier.

Second. That at the time hereinafter set forth said defendant was, and now is, operating a railroad in this State, the lines of which are more than one hundred miles in length and which is authorized by law to charge a maximum fare of more than two cents per mile and not more than three cents per mile (to wit, three cents per mile), and which does charge and did charge at the time herein set forth a maximum fare of more than two cents per mile for conveying passengers on its said lines.

Third. That Wellsville is a village, duly incorporated under the laws of this State, in the county of Allegany. That said defendant's said lines extend through said village. That said defendant had, prior to the time herein set forth, established a ticket office for the regular sale of tickets to its passengers, for transportation on
74 its said lines, at its station and in said village, and then maintained the same for such purpose and regularly sold tickets thereat, for such transportation.

Fourth. That upon the 17th day of November, 1896, this plaintiff duly made application to said defendant, at its ticket office, in said village of Wellsville, to its ticket agent, therein, acting as such and

in charge thereof, for a mileage book having one thousand coupons attached thereto entitling the holder thereof, upon surrendering at any ticket office on said lines, coupons equal in number to the miles, plaintiff or a member of his family wish- to travel to a ticket entitling the holder to the same rights and privileges in respect to transportation of persons and property as the highest class ticket issued by defendant, to travel one thousand miles on lines of such railroad and demanded that the defendant issue to the plaintiff such mileage book required to be kept for sale thereat, by the provisions of an act, entitled "An act in relation to the issue of mileage books by railroad corporations," constituting chapter 1027 of the Laws of 1895, as amended by chapter 835 of the Laws of 1896. That at the same time with such application and demand for such mileage book, plaintiff duly tendered to said defendant the sum of twenty dollars, lawful money of the United States, to pay for such mileage book, by handing the same to and offering it to said ticket agent within said office, at the place so established. That plaintiff was then, and now is, ready and willing to pay said sum for such mileage book.

That said defendant in violation of the provisions of said act
75 and of its duty thereunder, refused to issue such mileage book to plaintiff and did not and would not issue or offer to issue the same, when requested and demanded. Plaintiff further alleges, upon information and belief, that the said defendant did not, at said time, and does not now, keep such mileage books for sale at its said ticket office, as required. All against the form of the *such* statute.

Fifth. That by such refusal to issue such mileage book to the plaintiff, on his application, as aforesaid, the said defendant forfeited and became liable to pay to the plaintiff the sum of fifty dollars and which sum the plaintiff thereby became entitled to recover of the said defendant, therefor, and the said defendant, thereby, became indebted to the plaintiff in said sum of $50, which is plaintiff's damages herein, and to recover which sum, so forfeited, under said statute, for such refusal to issue such mileage book, this action is brought.

Sixth. That said sum of fifty dollars remains wholly unpaid.

Seventh. That one year has not elapsed since said cause of action accrued to the plaintiff.

Wherefore plaintiff demands judgment against the defendant for the sum of fifty dollars and interest from this date, and costs of this action.

Dated March 10th, 1897.

A. L. PURDY,
Plaintiff's Attorney.

Office and post-office address, Wellsville, Allegany county, N. Y.

76 ALLEGANY COUNTY, *ss:*

A. L. Purdy, being duly sworn, says that he is the plaintiff in the above-entitled action and that he has read the foregoing complaint and knows the contents thereof, and that the same is true to

the knowledge of the deponent except as to the matters therein stated to be alleged on information and belief and that as to those matters he believes it to be true.

A. L. PURDY.

Sworn — before me this 11th day of March, 1897.

H. J. TORREY,
Notary Public.

Supreme Court, County of Allegany.

ALBERT L. PURDY, Plaintiff,
against
ERIE RAILROAD COMPANY, Defendant. } Action No. "14."

To the above-named defendant:

You are hereby summoned to answer the complaint in this
77 action and to serve a copy of your answer on the plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service; and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Trial desired in the county of Allegany.

Dated the 28th day of July, 1897.

A. L. PURDY,
Plaintiff's Attorney.

Office and post-office address, Wellsville, N. Y.

Supreme Court, County of Allegany.

ALBERT L. PURDY, Plaintiff,
against
ERIE RAILROAD COMPANY, Defendant. } Action No. "14."

The above-named plaintiff, for a cause of action herein against the above-named defendant, alleges:

First. Upon information and belief, that the said defendant is a domestic railroad corporation, duly organized under the laws of this State for the purpose of the carriage of persons and property for hire as a common carrier.

78 Second. That at the time hereinafter set forth said defendant was, and now is, operating a railroad in this State, the lines of which are more than one hundred miles in length and which does not overcome an elevation exceeding three hundred feet to the mile within a distance of two miles, and which is authorized by law to charge a maximum fare of more than two cents per mile and not more than three cents per mile (to wit, three cents per mile); and which does charge and did charge at the time herein set forth a maximum fare of more than two cents per mile for conveying passengers, on its said lines.

Third. That Wellsville is a village, duly incorporated under the laws of this State, in the county of Allegany. That said defendant's said lines extend through said village. That said defendant had, prior to the time herein set forth, established a ticket office for the regular sale of tickets to its passengers, for transportation on its said lines, at its station and in said village, and then maintained the same for such purpose and regularly sold tickets, thereat, for such transportation.

Fourth. That upon the 28th day of July, 1897, this plaintiff duly made applicatian to said defendant, at its ticket office, in said village of Wellsville, to its ticket agent, therein acting as such and in charge thereof, for a mileage book, having one thousand coupons attached thereto, entitling the holder thereof to travel one thousand miles on the lines of such railroad and demanded that the defendant issue to the plaintiff such mileage book, required to be kept for sale thereat,

79 by the provisions of an act, entitled "An act in relation to the issue of mileage books by railroad corporations," constituting chapter 1027 of the Laws of 1895, as amended by chapter 835 of the Laws of 1896 as amended by chapter 484 of the Laws of 1897, entitling the said holder, (plaintiff,) or any member of his family or firm, or any salesman of his firm to whom such book is delivered by him, upon surrendering, at any ticket office on the line or lines of such railroad coupons equal in number to the number of miles which he or such member of his family or firm, or such salesman of such firm wishes to travel on the line or lines of such railroad, to a mileage exchange ticket therefor, entitling the holder thereof to the same rights and privileges in respect to the transportation of person and property to which the highest class ticket issued by such corporation would entitle him. That at the same time with such application and demand for such mileage book, plaintiff duly tendered to said defendant the sum of twenty dollars, lawful money of the United States, to pay for such mileage book, by handing the same to and offering it to said ticket agent, within said office, at the place so established. That plaintiff was then, and now is ready and willing to pay said sum for such mileage book. That said defendant, in violation of the provisions of said act, and of its duty thereunder, refused to issue such mileage book to plaintiff and did not and would not issue or offer to issue the same, when requested and demanded. Plaintiff further alleges, upon information and belief, that the said defendant did not keep such mileage books for sale at its said ticket office. All against the form of said statute.

Fifth. That by such refusal to issue such mileage book to

80 the plaintiff, on his application as aforesaid, the said defendant forfeited and became liable to pay to the plaintiff the sum of fifty dollars, which is plaintiff's damages herein, and to recover which sum, this action is brought.

Sixth. That said sum of fifty dollars remains wholly unpaid.

Seventh. That one year has not elapsed since said cause of action accrued to the plaintiff.

Wherefore, plaintiff demands judgment against the defendant

for the sum of fifty dollars and interest from this date, and costs of this action.

Dated July 28th, 1897.

A. L. PURDY,
Plaintiff's Attorney.

Office and post-office address, Wellsville, Allegany county, N. Y.

Supreme Court, County of Allegany.

ALBERT L. PURDY, Plaintiff,
against
ERIE RAILROAD COMPANY, Defendant. } Action No. 15.

To the above-named defendant:

You are hereby summoned to answer the complaint in this
81 action and to serve a copy of your answer on the plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service; and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Trial desired in the county of Allegany.

Dated the 21st day of July, 1897.

A. L. PURDY,
Plaintiff's Attorney.

Office and post-office address, Wellsville, N. Y.

Supreme Court, Allegany County, State of New York.

ALBERT L. PURDY, Plaintiff,
against
ERIE RAILROAD COMPANY, Defendant. } Action Number 15.

The above-named plaintiff for a cause of action, herein, against the above-named defendant, alleges:

First. Upon information and belief, that the said defendant is a domestic railroad corporation, duly organized under the laws of this State, for the purpose of the carriage of persons and property for hire, as a common carrier.

82 Second. That at the time hereinafter set forth said defendant was, and now is, operating a railroad in this State, the lines of which are more than one hundred miles in length and which does not overcome an elevation exceeding three hundred feet to the mile within a distance of two miles, and which is authorized by law to charge a maximum fare of more than two cents per mile and not more than three cents per mile (to wit, three cents per mile), and which does charge and did charge, at the time herein set forth, a maximum fare of more than two cents per mile for conveying passengers on its said lines.

Third. That Wellsville is a village, duly incorporated under the laws of this State, in the county of Allegany. That said defendant's

said lines extend through said village. That said defendant had, prior to the time herein set forth, established a ticket office for the regular sale of tickets to its passengers, for transportation on its said lines, at its station and in said village, and then maintained the same for such purpose and regularly sold tickets, thereat, for such transportation.

Fourth. That upon the 31st day of July, 1897, this plaintiff duly made application to said defendant, at its ticket office, in said village of Wellsville, to its ticket agent therein, acting as such and in charge thereof, for a mileage book, having one thousand coupons attached thereto, entitling the holder thereof to travel one thousand miles on the lines of such railroad and demanded that the defendant issue to the plaintiff such mileage book, required to be kept for sale, thereat,

83 by the provisions of an act, entitled "An act in relation to the issue of mileage books by railroad corporations," constituting chapter 1027 of the Laws of 1895, as amended by chapter 835 of the Laws of 1896, as amended by chapter 484 of the Laws of 1897, entitling said holder, (plaintiff), or any member of his family or firm, or any salesman of his firm to whom such book is delivered by him, upon surrendering, at any ticket office on the line or lines of such railroad coupons equal in number to the number of miles which he or such member of his family or firm, or such salesman of such firm wishes to travel on the line or lines of such railroad, to a mileage exchange ticket therefor, entitling the holder thereof to the same rights and privileges in respect to the transportation of person and property to which the highest class ticket issued by such corporation would entitle him. That at the same time, with such application and demand for such mileage book, plaintiff duly tendered to said defendant the sum of twenty dollars, lawful money of the United States, to pay for such mileage book, by handing the same to and offering it to said ticket agent, within said office, at the place so established. That plaintiff was then and now is, ready and willing to pay said sum for such mileage book. That said defendant, in violation of the provisions of said act and of its duty thereunder, refused to issue such mileage book to plaintiff, and did not and would not issue or offer to issue the same, when requested and demanded. Plaintiff further alleges, upon information and belief, that the said defendant did not keep such mileage books for sale at its said ticket office. All against the form of said statute.

Fifth. That by such refusal to issue such mileage book to

84 the plaintiff, on his application, as aforesaid, the said defendant forfeited and became liable to pay to the plaintiff the sum of fifty dollars, which is plaintiff's damages herein, and to recover which sum this action is brought.

Sixth. That said sum of fifty dollars remains wholly unpaid.

Seventh. That one year has not elapsed since said cause of action accrued to the plaintiff.

Wherefore, plaintiff demands judgment against the defendant for

the sum of fifty dollars and interest from this date, and costs of this action.

Dated July 31st, 1897.

A. L. PURDY,
Plaintiff's Attorney.

Office and post-office address, Wellsville, Allegany county, N. Y.

Supreme Court, County of Allegany.

ALBERT L. PURDY, Plaintiff,
against
ERIE RAILROAD COMPANY, Defendant. } Action Number 16.

To the above-named defendant:

You are hereby summoned to answer the complaint in this
85 action and to serve a copy of your answer on the plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service; and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Trial desired in the county of Allegany.

Dated the 5th day of August, 1897.

A. L. PURDY,
Plaintiff's Attorney.

Office and post-office address, Wellsville, N. Y.

Supreme Court, Allegany County, State of New York.

ALBERT L. PURDY, Plaintiff,
against
ERIE RAILROAD COMPANY, Defendant. } Action No. 16.

The above-named plaintiff, for a cause of action, herein, against the above-named defendant, alleges:

First. Upon information and belief, that the said defendant is a domestic railroad corporation, duly organized under the laws of this State, for the purpose of the carriage of persons and property for hire, as a common-carrier.

86 Second. That at the time hereinafter set forth said defendant was, and now is, operating a railroad in this State, the lines of which are more than one hundred miles in length, and which does not overcome an elevation exceeding three hundred feet to the mile within a distance of two miles, and which is authorized by law to charge a maximum fare of more than two cents per mile and not more than three cents per mile (to wit, three cents per mile) and which does charge and did charge, at the time herein set forth, a maximum fare of more than two cents per mile for conveying passengers on its said lines.

Third. That Wellsville is a village, duly incorporated under the laws of this State, in the county of Allegany. That said defendant's

said lines extend through said village. That said defendant had, prior to the time herein set forth, established a ticket office for the regular sale of tickets to its passengers, for transportation on its said lines, at its station and in said village, and then maintained the same for such purpose and regularly sold tickets, thereat, for such transportation.

Fourth. That upon the 5th day of August, 1897, this plaintiff duly made application to said defendant at its ticket office in said village of Wellsville, to its ticket agent therein, acting as such and in charge thereof, for a mileage book, having one thousand coupons attached thereto, entitling the holder thereof to travel one thousand miles on the lines of such railroad and demanded that the defendant issue to the plaintiff such mileage book, required to be kept for sale thereat by the provisions of an act entitled
87 "An act in relation to the issue of mileage books by railroad corporations," constituting chapter 1027 of the Laws of 1895, as amended by chapter 835 of the Laws of 1896, as amended by chapter 484 of the Laws of 1897, entitling the said holder (plaintiff), or any member of his family or firm, or any salesman of his firm to whom such book is delivered by him, upon surrendering, at any ticket office on the line or lines of such railroad, coupons equal in number to the number of miles which he or such member of his family or firm, or such salesman of such firm wishes to travel on the line or lines of such railroad, to a mileage exchange ticket therefor, entitling the holder thereof to the same rights and privileges in respect to the transportation of person and property to which the highest class ticket issued by such corporation would entitle him. That at the same time, with such application and demand for such mileage book, plaintiff duly tendered to said defendant the sum of twenty dollars, lawful money of the United States, to pay for such mileage book, by handing the same to and offering it to said ticket agent, within said office, at the place so established. That plaintiff was then, and now is, ready and willing to pay said sum for such mileage book. That said defendant, in violation of the provisions of said act and of its duty thereunder, refused to issue such mileage book to plaintiff and did not and would not issue or offer to issue the same when requested and demanded. Plaintiff further alleges, upon information and belief, that the said defendant did not keep such mileage books for sale at its ticket office. All against the form of said statute.

88 Fifth. That by such refusal to issue such mileage book to the plaintiff, on his application, as aforesaid, the said defendant forfeited and became liable to pay to the plaintiff the sum of fifty dollars, which is plaintiff's damages herein, and to recover which sum this action is brought.

Sixth. That said sum of fifty dollars remains wholly unpaid.

Seventh. That one year has not elapsed since said cause of action accrued to the plaintiff.

Wherefore, plaintiff demands judgment against the defendant for

the sum of fifty dollars and interest from this date, and costs of this action.

Dated August 5th, 1897.

A. L. PURDY,
Plaintiff's Attorney.

Office and post-office address, Wellsville, Allegany county, N. Y.

Supreme Court, County of Allegany.

ALBERT L. PURDY, Plaintiff,
against
ERIE RAILROAD COMPANY, Defendant. } Action No. 17.

To the above-named defendant:

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer on the plaintiff's attorney
89 within twenty days after the service of this summons, exclusive of the day of service; and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Trial desired in county of Allegany.

Dated the 7th day of August, 1897.

A. L. PURDY,
Plaintiff's Attorney.

Office and post-office address, Wellsville, N. Y.

Supreme Court, Allegany County, State of New York.

ALBERT L. PURDY, Plaintiff,
against
ERIE RAILROAD COMPANY, Defendant. } Action No. 17.

The above-named plaintiff, for a cause of action, herein, against the above-named defendant, alleges:

First. Upon information and belief, that the said defendant is a domestic railroad corporation, duly organized under the laws of this State, for the purpose of the carriage of persons and property for hire, as a common carrier.

90 Second. That at the time hereinafter set forth said defendant was, and now is operating a railroad in this State, the lines of which are more than one hundred miles in length and which does not overcome an elevation exceeding three hundred feet to the mile within a distance of two miles, and which is authorized by law to charge a maximum fare of more than two cents per mile and not more than three cents per mile (to wit, three cents per mile) and which does charge and did charge, at the time herein set forth, a maximum fare of more than two cents per mile for conveying passengers on its said lines.

Third. That Wellsville is a village, duly incorporated under the laws of the State, in the county of Allegany; that said defendant's

said lines extend through said village. That said defendant had prior to the time herein set forth, established a ticket office for the regular sale of tickets to its passengers, for transportation on its said lines, at its station and in said village, and then maintained the same for such purpose and regularly sold tickets, thereat, for such transportation.

Fourth. That upon the 7th day of August, 1897, this plaintiff duly made application to said defendant, at its ticket office, in said village of Wellsville, to its ticket agent therein, acting as such and in charge thereof, for a mileage book, having one thousand coupons attached thereto, entitling the holder thereof to travel one thousand miles on the lines of such railroad and demanded that the defendant issue to the plaintiff such mileage book, required to be kept for sale, thereat, by the provisions of an act, entitled "An act in relation to the issue of mileage books by railroad corporations," constituting chapter 1027 of the Laws of 1895, as amended by chapter 835 of the Laws of 1896, as amended by chapter 484 of the Laws of 1897, entitling the said holder (plaintiff), or any member of his family or firm, or any salesman of his firm to whom such book is delivered by him, upon surrendering, at any ticket office on the line or lines of such railroad coupons equal in number to the number of miles which he or such member of his family or firm, or such salesman of such firm wishes to travel on the line or lines of such railroad, to a mileage exchange ticket therefor, entitling the holder thereof to the same rights and privileges in respect to the transportation of person and property to which the highest class ticket issued by such corporation would entitle him. That at the same time with such application and demand for such mileage book, plaintiff duly tendered to said defendant the sum of twenty dollars, lawful money of the United States, to pay for such mileage book, by handing the same to and offering it to said ticket agent, within said office, at the place so established. That plaintiff was then, and now is, ready and willing to pay said sum for such mileage book. That said defendant in violation of the provisions of said act and of its duty thereunder, refused to issue such mileage book to plaintiff and did not and would not issue or offer to issue the same, when requested and demanded. Plaintiff further alleges, upon information and belief, that the said defendant did not keep such mileage books for sale at its said ticket office. All against the form of said statute.

91

Fifth. That by such refusal to issue such mileage book to the plaintiff, on his application, as aforesaid, the said defendant forfeited and became liable to pay to the plaintiff the sum of fifty dollars, which is plaintiff's damages, herein, and to recover which sum this action is brought.

92

Sixth. That said sum of fifty dollars remains wholly unpaid.

Seventh. That one year has not elapsed since said cause of action accrued to the plaintiff.

Wherefore, plaintiff demands judgment against the defendant for

the sum of fifty dollars and interest from this date and costs of this action.

Dated August 7th, 1897.

A. L. PURDY,
Plaintiff's Attorney.

Office and post-office address, Wellsville, Allegany county, N. Y.

93 Supreme Court, County of Allegany.

ALBERT L. PURDY, Plaintiff,
against
ERIE RAILROAD COMPANY, Defendant. } Action No. 18.

To the above-named defendant:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer on the plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service; and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Trial desired in the county of Allegany.

Dated the 12th day of August, 1897.

A. L. PURDY,
Plaintiff's Attorney.

Office and post-office address, Wellsville, N. Y.

94 Supreme Court, Allegany County, State of New York.

ALBERT L. PURDY, Plaintiff,
against
ERIE RAILROAD COMPANY, Defendant. } Action No. 18.

The above-named plaintiff, for a cause of action herein against the above-named defendant, alleges:

First. Upon information and belief, that the said defendant is a domestic railroad corporation, duly organized under the laws of this State, for the purpose of the carriage of persons and property for hire as a common carrier.

Second. That at the time hereinafter set forth said defendant was, and now is, operating a railroad in this State, the lines of which are more than one hundred miles in length and which does not overcome an elevation exceeding three hundred feet to the mile within a distance of two miles, and which is authorized by law to charge a maximum fare of more than two cents per mile, and not more than three cents per mile, to wit: three cents per mile; and which does charge and did charge, at the time set forth, a maximum fare of more than two cents per mile for conveying passengers on its said lines.

Third. That Wellsville is a village duly incorporated under the laws of this State, in the county of Allegany. That said defendant's

said lines extend through said village. That said defendant
95 had, prior to the time herein set forth, established a ticket office for the regular sale of tickets to its passengers, for transportation on its said lines, at its station and in said village of Wellsville and then maintained the same for such purpose and regularly sold tickets thereat for such transportation.

Fourth. That upon the 11th day of August, 1897, this plaintiff duly made application to said defendant, at its ticket office in said village of Wellsville, to its ticket agent therein, acting as such and in charge thereof, for a mileage book having one thousand coupons attached thereto, entitling the holder thereof to travel one thousand miles on the lines of such railroad, and demanded that the defendant issue to the plaintiff such mileage book, required to be kept for sale thereat by the provisions of an act, entitled "An act in relation to the issue of mileage books by railroad corporations," constituting chapter 1027 of the Laws of 1895, as amended by chapter 835 of the Laws of 1896, as amended by chapter 484 of the Laws of 1897, entitling the said holder (plaintiff), or any member of his family or firm, or any salesman of his firm to whom such book is delivered by him, upon surrendering, at any ticket office on the line or lines of such railroad coupons equal in number to the number of miles which he or such member of his family or firm or such salesman of such firm wishes to travel on the line or lines of such railroad, to a mileage exchange ticket therefor, entitling the holder thereof to the same rights and privileges in respect to the transportation of person and property to which the highest class ticket issued by such corpo-
96 ration would entitle him. That at the same time with such application and demand for such mileage book, plaintiff duly tendered to said defendant the sum of twenty dollars, lawful money of the United States, to pay for such mileage book, by handing the same to and offering it to said ticket agent, within said office, at the place so established. That plaintiff was then, and now is, ready and willing to pay said sum for such mileage book. That said defendant, in violation of the provisions of said act and of its duty thereunder, refused to issue such mileage book to plaintiff and did not and would not issue or offer to issue the same when requested and demanded. Plaintiff furth- alleges upon information and belief that the said defendant did not keep such mileage books for sale at its said ticket office. All against the form of said statute.

Fifth. That by such refusal to issue such mileage book to plaintiff, on his application as aforesaid, the said defendant forfeited and became liable to pay to the plaintiff the sum of fifty dollars which is plaintiff's damages, herein, and to recover which sum, this action is brought.

Sixth. That said sum of fifty dollars remains wholly unpaid.

Seventh. That one year has not elapsed since said cause of action accrued to the plaintiff.

Wherefore, plaintiff demands judgment against the defend-

97 ant for the sum of fifty dollars and interest from this date and costs of this action.

Dated August 12, 1897.

A. L. PURDY,
Plaintiff's Attorney.

Office and post-office address, Wellsville, Allegany county, N. Y.

Supreme Court, County of Allegany.

ALBERT L. PURDY, Plaintiff,
against
ERIE RAILROAD COMPANY, Defendant. } Action No. 19.

To the above-named defendant:

You are hereby summoned, to answer the complaint in this action, and to serve a copy of your answer on the plaintiff's attorney within twenty days after the service of the summons, exclusive of the day of service; and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Trial desired in the county of Allegany.

Dated the 30th day of August, 1897.

A. L. PURDY,
Plaintiff's Attorney.

Office and P. O. address, Wellsville, N. Y.

98 Supreme Court, Allegany County, State of New York.

ALBERT L. PURDY, Plaintiff,
against
ERIE RAILROAD COMPANY, Defendant. } Action No. 19.

The above-named plaintiff for a cause of action herein against the above-named defendant, alleges:

First. Upon information and belief, that the said defendant is a domestic railroad corporation, duly organized under the laws of this State for the purpose of the carriage of persons and property for hire, as a common carrier.

Second. That at the time hereinafter set forth said defendant was, and now is, operating a railroad in this State the lines of which are more than one hundred miles in length and which does not overcome an elevation exceeding three hundred feet to the mile within a distance of two miles, and which is authorized by law to charge a maximum fare of more than two cents per mile and not more than three cents per mile (to wit, three cents per mile) and which does charge and did charge, at the time herein set forth, a maximum fare of more than two cents per mile for conveying passengers on its said lines.

Third. That Wellsville is a village, duly incorporated under the

laws of this State, in the county of Allegany. That said de-
99 fendant's said lines extend through said village. That said defendant had, prior to the time herein set forth, established a ticket office for the regular sale of tickets to its passengers, for transportation on its said lines, at its station, and in said village, and then maintained the same for such purpose and regularly sold tickets thereat for such transportation.

Fourth. That upon the 28th day of August, 1897, this plaintiff duly made application to said defendant, at its ticket office, in said village of Wellsville, to its ticket agent, therein, acting as such and in charge thereof, for a mileage book, having one thousand coupons attached thereto, entitling the holder thereof to travel one thousand miles on the lines of such railroad, and demanded that the defendant issue to the plaintiff such mileage book, required to be kept for sale, thereat, by the provisions of an act, entitled "An act in relation to the issue of mileage books by railroad corporations," constituting chapter 1027 of the Laws of 1895, as amended by chapter 835 of the Laws of 1896, as amended by chapter 484 of the Laws of 1897, entitling the said holder, (plaintiff), or any member of his family or firm, or any salesman of his firm to whom such book is delivered by him, upon surrendering, at any ticket office on the line or lines of such railroad coupons equal in number to the number of miles which he or such member of his family or firm, or such salesman of such firm wishes to travel on the line or lines of such railroad, to a mileage exchange ticket therefor, entitling the holder thereof to the same rights and privi-
leges in respect to the transportation of person and property
100 to which the highest class ticket issued by such corporation would entitle him. That at the same time, with such application and demand for such mileage book, plaintiff duly tendered to said defendant the sum of twenty dollars, lawful money of the United States, to pay for such mileage book, by handing the same to and offering it to said ticket agent, within said office, at the place so established. That plaintiff was then, and now is, ready and willing to pay said sum for such mileage book. That said defendant, in violation of the provisions of said act, and of its duty thereunder, refused to issue such mileage book to plaintiff and did not and would not issue or offer to issue the same, when requested and demanded. Plaintiff further alleges, upon information and belief, that the said defendant did not keep such mileage books for sale at its said ticket office. All against the form of said statute.

Fifth. That by such refusal to issue such mileage book to plaintiff, on his application, as aforesaid, the said defendant forfeited and became liable to pay to the plaintiff the sum of fifty dollars, which is plaintiff's damages, herein, and to recover which sum this action *is action* is brought.

Sixth. That said sum of fifty dollars remains wholly unpaid.

Seventh. That one year has not elapsed since said cause of action accrued to the plaintiff.

101 Wherefore, the plaintiff demands judgment against the de-

fendant for the sum of fifty dollars and interest from this date, and costs of this action.

Dated August 30th, 1897

A. L. PURDY,
Plaintiff's Attorney.

Office and post-office address, Wellsville, Allegany county, N. Y.

Supreme Court, Allegany County.

ALBERT L. PURDY, Plaintiff,
against
ERIE RAILROAD COMPANY, Defendant. } Action No. 1.

The above-named defendant not waiving but insisting that the complaint herein does not state facts sufficient to constitute a cause of action against it by Sprague, Moot, Sprague & Brownell, its attorneys, answers the said complaint as follows:

First. It admits the allegations contained in the paragraphs of said complaint numbered first and third therein.

Second. It admits that it is and at the time in said complaint mentioned was operating a railroad in the State of New York
102 more than one hundred miles in length, and that it is authorized by law to charge, and does charge, a maximum fare of more than two cents per mile, but it denies, upon information and belief, that it is not authorized by law to charge a maximum fare of more than three cents per mile.

Third. It denies that it has any knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in the paragraph of said complaint numbered fourth therein, except that it admits that it did not, at the time mentioned in said complaint, keep for sale at its ticket office in the village of Wellsville, mileage books of the form mentioned and described in the said complaint.

Fourth. Upon information and belief, it denies each and every allegation contained in the paragraph of said complaint numbered fifth therein.

Fifth. It alleges, upon information and belief that under and by virtue of the laws of the State of New York incorporating and applicable to it and its predecessors in interest, it was and is authorized to fix its own rates of fare, and that it is not limited to a maximum fare of not more than three cents per mile, and that the act entitled, "An act in relation to the issue of mileage books by railroad corporations," being chapter 835 of the Laws of 1896, referred to in said complaint, has no application to it and is of no force or effect as against it.

Sixth. It alleges that the line of the railroad owned and operated by it extends from Jersey City in the State of New Jersey, through the States of New Jersey, Pennsylvania and New York, and
103 in the State of New York connects with lines of railroad leased by it, and operated and substantially owned by it, over

which it transports persons and property to Chicago, with numerous lateral branches extending from the State of New York to different States. And it alleges upon information and belief, that the said act known as chapter 835 of the Laws of 1896 is unconstitutional and void, because it is in violation of the provision of the Constitution of the United States which commits to Congress the sole power to regulate commerce between the several States, and that it is unconstitutional and void because it is in violation of various other provisions of the Constitution of the United States, and of the constitution of the State of New York.

Seventh. Further answering said complaint, it alleges upon information and belief, that it is not liable to the plaintiff for the penalty sought to be recovered in this action, and that the plaintiff did not demand a mileage book in good faith, but that such demand, if any, was made with the desire and expectation that it would be refused, and for the purpose of suing for a penalty therefor.

Wherefore, defendant demands judgment that the complaint in this action be dismissed, with costs.

SPRAGUE, MOOT, SPRAGUE & BROWNELL,
Attorneys for the Defendant, 45 *Erie County Savings Bank Building, Buffalo, N. Y.*

104 Supreme Court, Erie County.

ALBERT L. PURDY, Plaintiff,
against
ERIE RAILROAD COMPANY, Defendant. } Action No. 2.

The above-named defendant, not waiving but insisting that the complaint herein does not state facts sufficient to constitute a cause of action against it, by Sprague, Moot, Sprague & Brownell, its attorneys, answers the said complaint as follows:

First. It admits the allegations contained in the paragraphs of said complaint numbered first and third therein.

Second. It admits that it is and at the time in said complaint mentioned was operating a railroad in the State of New York more than one hundred miles in length, and that it is authorized by law to charge, and does charge, a maximum fare of more than two cents per mile; but it denies, upon information and belief, that it is not authorized by law to charge a maximum fare of more than three cents per mile.

Third. It denies that it has any knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in the paragraph of said complaint numbered fourth therein, except that it admits that it did not, at the time mentioned in said
105 complaint, keep for sale at its ticket office in the village of Wellsville, mileage books of the form mentioned and described in said complaint.

Fourth. Upon information and belief, it denies each and every al-

legation contained in the paragraph of said complaint numbered fifth therein.

Fifth. It alleges upon information and belief, that under and by virtue of the laws of the State of New York incorporating and applicable to it and its predecessors in interest, it was and is authorized to fix its own rates of fare, and that it is not limited to a maximum fare of not more than three cents per mile, and that the act entitled, "An act in relation to the issue of mileage books by railroad corporations," being chapter 835 of the Laws of 1896, referred to in said complaint, has no application to it, and is of no force or effect as against it.

Sixth. It alleges that the line of the railroad owned and operated by it extends from Jersey City, in the State of New Jersey, through the States of New Jersey, Pennsylvania and New York, and in the State of New York connects with lines of railroad leased by it, operated and substantially owned by it, over which it transports persons and property to Chicago, with numerous lateral branches extending from the State of New York to different States. And it alleges, upon information and belief, that the said act known as chapter 835 of the Laws of 1896, is unconstitutional and void, because it is in violation of the provision of the Constitution of the United States which commits to Congress the sole power to regulate commerce between the several States, and that it is unconstitutional and void and
106 because it is in violation of various other provisions of the Constitution of the United States, and of the Constitution of the State of New York.

Seventh. Further answering said complaint, it alleges, upon information and belief, that heretofore and prior to the commencement of this action, the plaintiff commenced other actions against the defendant, to recover a penalty for the alleged violation of said statutes set forth in said complaint; that said actions are still pending undetermined, and that there are other actions pending for the same cause for which this action is brought. It alleges, upon information and belief, that it is not liable to the plaintiff for the penalty sought to be recovered in this action, and that the plaintiff did not demand a mileage book in good faith, but that such demand, if any, was made with the desire and expectation that it would be refused, and for the purpose of suing for a penalty therefor.

Wherefore, defendant demands judgment that the complaint in this action be dismissed, with costs.

SPRAGUE, MOOT, SPRAGUE & BROWNELL,
Attorneys for Defendant.

No. 45 Erie County Savings Bank building, Buffalo, N. Y.

107 Supreme Court, Allegany County.

ALBERT L. PURDY
vs.
ERIE RAILROAD COMPANY. } Action No. 3.

The answer in this action is identical with and in all respects similar to the answer in action No. 2 above printed and an exact copy of such answer.

Supreme Court, Allegany County.

ALBERT L. PURDY
vs.
ERIE RAILROAD COMPANY. } Action No. 4.

The answer in this action is identical with and in all respects similar to the answer in action No. 2 above printed and an exact copy of such answer.

Supreme Court, Allegany County.

ALBERT L. PURDY
vs.
ERIE RAILROAD COMPANY. } Action No. 5.

The answer in this action is identical with and in all respects similar to the answer in action No. 2 above printed and an exact copy of such answer.

108 Supreme Court, Allegany County.

ALBERT L. PURDY
vs.
ERIE RAILROAD COMPANY. } Action No. 6.

The answer in this action is identical with and in all respects similar to the answer in action No. 2 above printed and an exact copy of such answer.

Supreme Court, Allegany County.

ALBERT L. PURDY
vs.
ERIE RAILROAD COMPANY. } Action No. 7.

The answer in this action is identical with and in all respects similar to the answer in action No. 2 above printed and an exact copy of such answer.

Supreme Court, Allegany County.

ALBERT L. PURDY
vs.
ERIE RAILROAD COMPANY. } Action No. 8.

The answer in this action is identical with and in all respects similar to the answer in action No. 2 above printed and an exact copy of such answer.

109 Supreme Court, Allegany County.

ALBERT L. PURDY
vs.
ERIE RAILROAD COMPANY. } Action No. 9.

The answer in this action is identical with and in all respects similar to the answer in action No. 2 above printed and an exact copy of such answer.

Supreme Court, Allegany County.

ALBERT L. PURDY
vs.
ERIE RAILROAD COMPANY. } Action No. 10.

The answer in this action is identical with and in all respects similar to the answer in action No. 2 above printed and an exact copy of such answer.

Supreme Court, Allegany County.

ALBERT L. PURDY, Plaintiff,
against
ERIE RAILROAD COMPANY, Defendant. } Action No. 11.

The above-named defendant, not waiving, but insisting that
110 the amended complaint herein does not state facts sufficient to constitute a cause of action against it, by Sprague, Moot, Sprague & Brownell, its attorneys, answers the said amended complaint as follows:

First. It admits the allegations contained in the paragraphs of said complaint numbered first and third therein.

Second. It admits that it is and at the time in said complaint mentioned, was operating a railroad in the State of New York, more than one hundred miles in length, and that it is authorized by law to charge, and does charge a maximum fare of more than two cents per mile; but it denies, upon information and belief that it is not authorized by law to charge a maximum fare of more than three cents per mile.

Third. It denies that it has any knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in the paragraph of said complaint numbered fourth therein.

Fourth. Upon information and belief it denies each and every allegation contained in the paragraph of said complaint numbered fifth therein.

Fifth. It alleges upon information and belief that under and by virtue of the laws of the State of New York incorporating and applicable to it, and its predecessors in interest, it was and is authorized to fix its own rates of fare, and that it is not limited to a maximum fare of not more than three cents per mile, and that the act
111 entitled, "An act in relation to the issue of mileage books by railroad corporations," being chapter 835 of the Laws of 1896,

referred to in said complaint, has no application to it, and is of no force or effect as against it.

Sixth. It alleges that the line of the railroad owned and operated by it extends from Jersey City in the State of New Jersey, through the States of New Jersey, Pennsylvania and New York, and in the State of New York connects with lines of railroad leased by it, and operated and substantially owned by it, over which it transports persons and property to Chicago, with numerous lateral branches extending from the State of New York to different States. And it alleges upon information and belief, that the said act known as chapter 835 of the Laws of 1896, is unconstitutional and void, because it is in violation of the provision of the Constitution of the United States which commits to Congress the sole power to regulate commerce between the several States, and that it is unconstitutional and void because it is in violation of various other provisions of the Constitution of the United States, and of the constitution of the State of New York.

Seventh. Further answering said complaint, it alleges, upon information and belief, that heretofore and prior to the commencement of this action, the plaintiff commenced other actions against the defendant, to recover a penalty for the alleged violation of said statutes set forth in said complaint; that said actions are still pending, undetermined, and that there are other actions pending for the same cause for which this action is brought. It alleges upon in-
112 formation and belief that it is not liable to the plaintiff for the penalty sought to be recovered in this action, and that the plaintiff did not demand a mileage book in good faith, but that such demand, if any, was made with the desire and expectation that it would be refused, and for the purpose of suing for a penalty therefor.

Wherefore, defendant demands judgment that the complaint in this action be dismissed, with costs.

SPRAGUE, MOOT, SPRAGUE & BROWNELL,
Attorneys for Defendant, No. 45 Erie County Savings Bank Building, Buffalo, N. Y.

Supreme Court, Allegany County.

ALBERT L. PURDY, Plaintiff,
against
ERIE RAILROAD COMPANY, Defendant. } Action No. 12.

The above-named defendant, not waiving, but insisting that the amended complaint herein does not state facts sufficient to constitute a cause of action against it, by Sprague, Moot, Sprague & Brownell, its attorneys, answers the said amended complaint as follows:
113 First. It admits the allegations contained in the paragraphs of said complaint numbered first and third therein.

Second. It admits that it is and at the time in said complaint

mentioned was operating a railroad in the State of New York more than one hundred miles in length, and that it is authorized by law to charge, and does charge, a maximum fare of more than two cents per mile; but it denies, upon information and belief, that it is not authorized by law to charge a maximum fare of more than three cents per mile.

Third. It denies that it has any knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in the paragraph of said complaint numbered fourth therein.

Fourth. Upon information and belief it denies each and every allegation contained in the paragraph of said complaint numbered fifth therein.

Fifth. It alleges upon information and belief that under and by virtue of the laws of the State of New York incorporating and applicable to it and its predecessors in interest, it was and is authorized to fix its own rates of fare, and that it is not limited to a maximum fare of not more than three cents per mile, and that the act entitled, "An act in relation to the issue of mileage books by railroad corporations," being chapter 835 of the Laws of 1896, referred to in said complaint, has no application to it, and is of no force or effect as against it.

Sixth. It alleges that the line of the railroad owned and
114 operated by it extends from Jersey City, in the State of New Jersey, through the States of New Jersey, Pennsylvania and New York, and in the State of New York connects with lines of railroad leased by it, and operated and substantially owned by it, over which it transports persons and property to Chicago, with numerous lateral branches extending from the State of New York to different States. And it alleges upon information and belief, that the said act known as chapter 835 of the Laws of 1896, is unconstitutional and void, because it is in violation of the provision of the Constitution of the United States which commits to Congress the sole power to regulate commerce between the several States, and that it is unconstitutional and void because it is in violation of various other provisions of the Constitution of the United States, and of the constitution of the State of New York.

Seventh. Further answering said complaint, it alleges, upon information and belief, that heretofore and prior to the commencement of this action, the plaintiff commenced other actions against the defendant, to recover a penalty for the alleged violation of said statutes set forth in said complaint; that said actions are still pending undetermined, and that there are other actions pending for the same cause for which this action is brought. It alleges upon information and belief that it is not liable to the plaintiff for the penalty sought to be recovered in this action, and that the plaintiff did not demand a mileage book in good faith, but that such demand, if any, was made with the desire and expectation that it would be refused, and for the purpose of suing for a penalty therefor.

115 Wherefore, defendant demands judgment that the complaint in this action be dismissed, with costs.

SPRAGUE, MOOT, SPRAGUE & BROWNELL,
Attorneys for Defendant.

No. 45 Erie County Savings Bank building, Buffalo, N. Y.

Supreme Court, Allegany County.

ALBERT L. PURDY, Plaintiff,
against
ERIE RAILROAD COMPANY, Defendant. } Action No. 13.

The above-named defendant, not waiving, but insisting that the complaint herein does not state facts sufficient to constitute a cause of action against it, by Sprague, Moot, Sprague & Brownell, its attorneys, answers the said complaint as follows:

First. It admits the allegations contained in the paragraphs of said complaint numbered first and third therein.

Second. It admits that it is and at the time in said complaint mensioned, was operating a railroad in the State of New York, more than one hundred miles in length, and that it is authrized
116 by law to charge, and does charge a maximum fare of more than two cents per mile; but it denies, upon information and belief that it is not authorized by law to charge a maximum fare of more than three cents per mile.

Third. It denies that it has any knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in the paragraph of said complaint numbered fourth therein.

Fourth. Upon information and belief it denies each and every allegation contained in the paragraph of said complaint numbered fifth therein.

Fifth. It alleges upon information and belief that under and by virtue of the laws of the State of New York incorporating and applicable to it, and its predecessors in interest, it was and is authorized to fix its own rates of fare, and that it is not limited to a maximum fare of not more than three cents per mile, and that the act entitled "An act in relation to the issue of mileage books by railroad corporations," being chapter 835 of the Laws of 1896, referred to in said complaint, has no application to it, and is of no force or effect as against it.

Sixth. It alleges that the line of the railroad owned and operated by it extends from Jersey City, in the State of New Jersey, through the States of New Jersey, Pennsylvania, and New York, and in the State of New York connects with lines of railroad leased by it, and operated and substantially owned by it, over which it transports persons and property to Chicago, with numerous lateral branches
117 extending from the State of New York to different States.

And it alleges upon information and belief, that the said act known as chapter 835 of the Laws of 1896, is unconstitutional and

void, because it is in violation of the provision of the Constitution of the United States which commits to Congress the sole power to regulate commerce between the several States, and that it is unconstitutional and void because it is in violation of various other provisions of the Constitution of the United States, and of the constitution of the State of New York.

Seventh. Further answering said complaint, it alleges, upon information and belief, that heretofore and prior to the commencement of this action, the plaintiff commenced other actions against the defendant, to recover a penalty for the alleged violation of said statutes set forth in said complaint; that said actions are still pending, undetermined, and that there are other actions pending for the same cause for which this action is brought. It alleges upon information and belief that it is not liable to the plaintiff for the penalty sought to be recovered in this action, and that the plaintiff did not demand a mileage book in good faith, but that such demand, if any, was made with the desire and expectation that it would be refused, and for the purpose of suing for a penalty therefor.

Wherefore, defendant demands judgment that the complaint in this action be dismissed, with costs.

SPRAGUE, MOOT, SPRAGUE & BROWNELL,
Attorneys for Defendant, 45 *Erie County Savings Bank Building, Buffalo, N. Y.*

118 Supreme Court, Allegany County.

ALBERT L. PURDY *against* ERIE RAILROAD COMPANY. } Action No. 14.

The answer in this action is identical with and in all respects similar to the answer in action No. 13 above printed and an exact copy of such answer.

Supreme Court, Allegany County.

ALBERT L. PURDY *against* ERIE RAILROAD COMPANY. } Action No. 15.

The answer in this action is identical with and in all respects similar to the answer in action No. 13 above printed and an exact copy of such answer.

Supreme Court, Allegany County.

ALBERT L. PURDY *against* ERIE RAILROAD COMPANY. } Action No. 16.

The answer in this action is identical with and in all respects similar to the answer in action No. 13 above printed and an exact copy of such answer.

119 Supreme Court, Allegany County.

ALBERT L. PURDY
against
ERIE RAILROAD COMPANY. } Action No. 17.

The answer in this action is identical with and in all respects similar to the answer in action No. 13 above printed and an exact copy of such answer.

Supreme Court, Allegany County.

ALBERT L. PURDY
against
ERIE RAILROAD COMPANY. } Action No. 18.

The answer in this action is identical with and in all respects similar to the answer in action No. 13 above printed and an exact copy of such answer.

Supreme Court, Allegany County.

ALBERT L. PURDY
against
ERIE RAILROAD COMPANY. } Action No. 19.

The answer in this action is identical with and in all respects similar to the answer in action No 13 above printed and an exact copy of such answer.

120 Justice's Court, Town of Wellsville.

Before H. J. Torrey, Justice.

ALBERT L. PURDY, Plaintiff,
against
ERIE RAILROAD COMPANY, Defendant. } Action No. A.

The above-named defendant, not waiving, but insisting that the complaint herein does not state facts sufficient to constitute a cause of action against it, and asserting that this court and justice have not jurisdiction in this action, by Sprague, Moot, Sprague & Brownell, its attorneys, answers the said complaint as follows:

First. It admits the allegations contained in the paragraphs of said complaint numbered first and third therein.

Second. It admits that it is, and at the time in said complaint mentioned, was operating a railroad in the State of New York, more than one hundred miles in length, and that it is authorized by law to charge, and does charge a maximum fare of more than two cents per mile; but it denies, upon information and belief, that — is not authorized by law to charge a maximum fare of more than three cents per mile.

Third. It denies that it has any knowledge or information
121 sufficient to form a belief as to the truth of any of the allegations contained in the paragraph of said complaint numbered fourth therein.

Fourth. Upon information and belief it denies each and every allegation contained in the paragraph of said complaint numbered fifth therein.

Fifth. It alleges upon information and belief that under and by virtue of the laws of the State of New York incorporating and applicable to it and its predecessors in interest, it was and is authorized to fix its own rates of fare, and that it is not limited to a maximum fare of not more than three cents per mile, and that the act entitled, "An act in relation to the issue of mileage books by railroad corporations," being chapter 835 of the Laws of 1896, referred to in *in* said complaint, has no application to it, and is of no force or effect as against it.

Sixth. It alleges that the line of the railroad owned and operated by it extends from Jersey City, in the State of New Jersey, through the States of New Jersey, Pennsylvania and New York, and in the State of New York connects with lines of railroad leased by it, and operated and substantially owned by it, over which it transports persons and property to Chicago, with numerous lateral branches extending from the State of New York to different States. And it alleges upon information and belief, that the said act known as chapter 835 of the Laws of 1896, is unconstitutional and void, because it is in violation of the provision of the Constitution of the United States which commits to Congress the sole power to regulate commerce between the several States, and that it is unconstitu-
122 tional and void because it is in violation of various other provisions of the Constitution of the United States, and of the constitution of the State of New York.

Seventh. Further answering said complaint, it alleges, upon information and belief, that heretofore and prior to the commencement of this action, the plaintiff commenced other actions against the defendant, to recover a penalty for the alleged violation of said statutes set forth in said complaint; that said actions are still pending undetermined, and that there are other actions pending for the same cause for which this action is brought. It alleges upon information and belief, that it is not liable to the plaintiff for the penalty sought to be recovered in this action, and that the plaintiff did not demand a mileage book in good faith, but that such demand, if any, was made with the desire and expectation that it would be refused, and for the purpose of suing for a penalty therefor.

Wherefore, defendant demands judgment that the complaint in this action be dismissed, with costs.

SPRAGUE, MOOT, SPRAGUE & BROWNELL,

Attorneys for Defendant, No. 45 Erie County Savings Bank Building, Buffalo, N. Y.

123 Justice's Court, Town of Wellsville.

Before H. J. Torrey, Justice.

ALBERT L. PURDY, Plaintiff,
against
ERIE RAILROAD COMPANY, Defendant. } Action No. B.

The above-named defendant, not waiving, but insisting that the complaint herein does not state facts sufficient to constitute a cause of action against it, and asserting that this court and justice have not jurisdiction in this action, by Sprague, Moot, Sprague and Brownell, its attorneys, answers the said complaint as follows:

First. It admits the allegations contained in the paragraphs of said complaint numbered first and third therein.

Second. It admits that it is and at the time in said complaint mentioned was operating a railroad in the State of New York more than one hundred miles in length, and that it is authorized by law to charge, and does charge, a maximum fare of more than two cents per mile; but it denies upon information and belief, that it is not authorized by law to charge a maximum fare of more than three cents per mile.

Third. It denies that it has any knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in the paragraph of said complaint numbered fourth therein.

124 Fourth. Upon information and belief it denies each and allegation contained in the paragraph of said complaint numbered fifth therein.

Fifth. It alleges upon information and belief that under and by virtue of the laws of the State of New York incorporating and applicable to it and its predecessors in interest, it was and is authorized to fix its own rates of fare, and that it is not limited to a maximum fare of not more than three cents per mile, and that the act, entitled "An act in relation to the issue of mileage books by railroad corporations," being chapter 835 of the Laws of 1896, referred to in said complaint, has no application to it, and is of no force or effect as against it.

Sixth. It alleges that the line of the railroad owned and operated by it extends from Jersey City, in the State of New Jersey, through the States of New Jersey, Pennsylvania and New York, and in the State of New York connects with lines of railroad leased by it, and operated and substantially owned by it, over which it transports persons and property to Chicago, with numerous lateral branches extending from the State of New York to different States. And it alleges upon information and belief, that the said act known as chapter 835 of the Laws of 1896, is unconstitutional and void, because it is in violation of the provision of the Constitution of the United States which commits to Congress the sole power to regulate commerce between the several States, and that it is unconstitutional and void because it is in violation of various other provisions of the Constitu-

tion of the United States, and of the constitution of the State of New York.

125 Seventh. Further answering said complaint, it alleges, upon information and belief, that heretofore and prior to the commencement of this action, the plaintiff commenced other actions against the defendant, to recover a penalty for the alleged violation of said statutes set forth in said complaint; that said actions are still pending undetermined, and that there are other actions pending for the same cause for which this action is brought. It alleges upon information and belief that it is not liable to the plaintiff for the penalty sought to be recovered in this action, and that the plaintiff did not demand a mileage book in good faith, but that such demand, if any, was made with the desire and expectation that it would be refused, and for the purpose of suing for a penalty therefor.

Wherefore, defendant demands judgment that the complaint in this action be dismissed, with costs.

SPRAGUE, MOOT, SPRAGUE & BROWNELL,
Attorneys for Defendant, No. 45 Erie County Savings Bank Building, Buffalo, N. Y.

126 At a special term of the supreme court of the State of New York, held in and for the county of Erie, at the city and county hall in the city of Buffalo, on the first day of December, 1896.

Present: Hon. Henry A. Childs, justice.

Supreme Court, County of Allegany.

ALBERT L. PURDY, Plaintiff,
against
ERIE RAILROAD COMPANY, Defendant. } Actions 2 to 12.

Justice's Court, Town of Wellsville, Allegany County.

ALBERT L. PURDY, Plaintiff,
against
ERIE RAILROAD COMPANY, Defendant. } Action- A and B.

Now, on reading and filing said order to show cause, and the affidavit of George F. Brownell verified herein November 27, 1896, and the affidavit of Albert L. Purdy verified herein November 30, 1896, and upon all the papers in said actions and proceedings heretofore had herein, and after hearing George F. Brownell, Esq., of
127 counsel for defendant, in favor of said motion, and Clarence A. Farnum, Esq., of counsel for plaintiff, in opposition thereto, and on motion of Sprague, Moot, Sprague & Brownell, attorneys for defendant, it is

Ordered, that said motion be, and the same hereby is granted, and that said actions A and B pending in the justice's court, in the town of Wellsville, Allegany county, N. Y., before H. J. Torrey, Esq.,

justice of the peace, be, and the same hereby are removed and transferred from said justice's court to the supreme court in and for Allegany county, and that said above-entitled actions numbered 2 to 12, both inclusive, and said actions A and B so removed and transferred, be, and the same hereby are consolidated into one action.

And the attorneys for the several parties to said actions having stipulated to such effect, it is further ordered, that such consolidation shall not affect the right of the plaintiff to recover more than one penalty in said consolidated action, but that his right to recover upon each alleged cause of action set forth in the several complaints shall be the same as if the said actions had not been consolidated, but had remained separate actions.

It is further ordered that with respect to the recovery and taxation of costs, said several causes of action in said consolidated action shall be treated and considered as separate actions up to the time of said consolidation, and that upon the recovery, or failure to recover upon said causes of actions respectively the successful party shall be entitled to tax his costs up to the first day of December, 1896, the same as if said actions had not been consolidated.

128 And it is further ordered that in case of recovery of costs by each party, said costs may be offset one against the other.

At a special term of the supreme court of the State of New York, held in and for the county of Erie, at the city and county hall, in the city of Buffalo, on the 28th day of April, 1897.

Present: Hon. Alfred Spring, justice.

Supreme Court, Allegany County.

ALBERT L. PURDY, Plaintiff,
against
ERIE RAILROAD COMPANY, Defendant. } Consolidated Action.

Supreme Court, Allegany County.

ALBERT L. PURDY, Plaintiff,
against
ERIE RAILROAD COMPANY, Defendant. } Action No. 13.

Upon consent of the attorneys for the respective parties hereto, and on motion of Sprague, Moot, Sprague & Brownell, defendant's attorneys, it is

129 Ordered, that the above-entitled action, viz: Albert L. Purdy, plaintiff, against Erie Railroad Company, defendant, consolidated action, and the action entitled Albert L. Purdy, plaintiff, against Erie Railroad Company, defendant, action No. 13, be, and the same hereby are consolidated into one action, subject to all the conditions contained in said order consolidating said actions entered December 3rd, 1896, in Allegany county clerk's office.

And the attorneys for the several parties to said actions having stipulated to such effect, it is further ordered that such consolidation shall not affect the right of the plaintiff to recover more than one

penalty in said consolidated action, but that his right to recover upon each alleged cause of action set forth in the several complaints shall be the same as if the said actions had not been consolidated, but had remained separate actions.

And it is further ordered that in case of recovery of costs by each party, said costs may be offset one against the other, and the stipulation of December 1st, 1896, continued as to such consolidated action. Date of issue of such consolidated action, for placing on calendar to be same as action No. 2.

We hereby consent to the entry of the above order.

Dated April 21, 1897.

A. L. PURDY, *Attorney for Plaintiff.*
SPRAGUE, MOOT, SPRAGUE & BROWNELL,
Attorneys for Defendant.

130 At a special term of the supreme court of the State of New York, held in and for the county of Erie, at the city and county hall, in the city of Buffalo, N. Y., eighth judicial district, on the 27th day of September, 1897.

Present: Hon. Henry A. Childs, justice.

Supreme Court, Allegany County.

ALBERT L. PURDY, Plaintiff,
against
ERIE RAILROAD COMPANY, Defendant. } Consolidated Action.

Supreme Court, Allegany County.

ALBERT L. PURDY, Plaintiff,
against
ERIE RAILROAD COMPANY, Defendant. } Actions Nos. 14 to 19, Both Inclusive.

Upon consent of the attorneys for the respective parties hereto, and

On motion of Moot, Sprague, Brownell & Marcy, -fendant's attorneys, it is

Ordered that the above-entitled actions, to wit: "Albert L. Purdy, plaintiff, against Erie Railroad Company, defendant, consolidated action," and the actions entitled "Albert L. Purdy, plaintiff, against Erie Railroad Company, defendant, actions numbers 14 to 19,
131 both inclusive," be and the same hereby are consolidated into one action, subject to all the conditions contained in the order consolidating said actions, entered December 3d, 1896, in Allegany county clerk's office.

And the attorneys for the respective parties to said actions having stipulated to such effect, it is further

Ordered, that such consolidation shall not affect the right of the plaintiff to recover more than one penalty in said consolidated action, but that his right to recover upon each alleged cause of action set forth in the several complaints shall be the same as if said actions

had not been consolidated but had remained separate actions. And it is

Further ordered, that in case of recovery of costs by each party, said costs may offset one against the other, and the stipulation of December 1st, 1896, continued as to such consolidated action; date of issue of such consolidated action for placing on calendar to be same as action No. 2.

132 At a trial term of the supreme court held at the court-house in the village of Belmont, in and for the county of Allegany, on the 12th day of October, 1897.

Present: Hon. John S. Lambert, justice presiding.

Supreme Court, Allegany County.

ALBERT L. PURDY *ag'st* ERIE RAILROAD COMPANY. } Action No. 1.

Supreme Court, Allegany County.

ALBERT L. PURDY *ag'st* ERIE RAILROAD COMPANY. } Actions No. 2 to 19.

Plaintiff having heretofore commenced an action against defendant known as action No. 1, and defendant herein having duly demurred to plaintiff's complaint, and such demurrer having been overruled by this court at this term, and the defendant thereupon having answered, and it appearing that plaintiff has begun certain other actions known as actions 2 to 19 and A and B which have been consolidated into one action known as the consolidated action pursuant to an order of the supreme court granted on the 27th day of September, 1897, and plaintiff being about to proceed to the trial of these actions, and it being stipulated between the attorneys hereto that said action No. 1 be united with the other actions in

133 the consolidated action upon the same terms as in the orders heretofore granted herein, consolidating the other actions herein; now, on motion of Moot, Sprague, Brownell & Marcy, attorneys for defendant,

It is ordered, that the above-entitled action, to wit: Albert L. Purdy *vs.* Erie Railroad Company, known as action No. 1, and the above-entitled action, to wit, Albert L. Purdy, plaintiff, *vs.* Erie Railroad Company, defendant, consolidated action, be, and the same hereby are, consolidated into one action subject to all the conditions contained in the order consolidating certain of said actions heretofore entered in the Allegany county clerk's office on December 3, 1896.

And it is further ordered that such consolidation shall not affect the right of the plaintiff to recover more than one penalty in the consolidated action, but that his right to recover upon each alleged cause of action set forth in the several complaints shall be the same as if said actions had not been consolidated, but had remained separate actions.

It is further ordered, that in case of recovery of costs by each party said costs may be offset one against the other.

Granted.

J. S. L.
J. S. C.

134 Supreme Court, Allegany County.

ALBERT L. PURDY
vs.
ERIE RAILROAD COMPANY.

This case was brought to trial at Belmont, New York, January 4th, 1898, before Hon. Henry A. Childs, justice, and a jury, when the following proceedings were had and testimony taken:

Appearances.

For the plaintiff: A. L. Purdy, Esq., Hon. Clarence A. Farnum, and C. S. Hall, Esq.

For the defendant: Messrs. Moot, Sprague, Brownell & Marcy, and Mr. Neflany.

Mr. MOOT: Before the plaintiff opens his case, your honor, to raise my question on the record, I make a motion to dismiss each of the actions consolidated in this action, upon the ground that the complaint in each of the actions fails to state facts sufficient to constitute a cause of action for a penalty.

The COURT: I will deny the motion and give you the exception.

Mr. FARNUM: Your honor, we first offer in evidence a certificate of incorporation of the defendant, The Erie Railroad Company, showing said defendant was duly incorporated as alleged in the complaint under the laws of the State of New York, as appears from said certificate filed in the office of the secretary of state, November 14, 1895.

135 Received and marked Exhibit "A."

Certificate referred to shows that the Erie railroad corporation, defendant, was duly organized and incorporated Nov. 14, 1895, under the general laws of the State of New York for the incorporation of railroads.

Mr. FARNUM: We also offer in evidence a stipulation bearing date September 21, 1897, signed by the plaintiff in person and by the attorneys for the defendant in behalf of the defendant.

Received and marked Exhibit "B," which reads as follows:

"Supreme Court, Allegany County.

ALBERT L. PURDY
vs.
ERIE RAILROAD COMPANY. } 6 Actions—14 to 19, Both Inclusive.

It is hereby stipulated by and between the parties to the above-entitled action, for the purpose of the trial of the issues therein, that

the railroad of the defendant, above named, does not overcome an elevation exceeding three hundred feet to the mile, within the distance of two miles.

Dated September 21, 1897.

A. L. PURDY,
Attorney for Plaintiff in Person, Wellsville, New York.
MOOT, SPRAGUE, BROWNELL & MARCY,
Attorneys for Defendant, Buffalo, New York."

136 Mr. FARNUM: I desire to offer in evidence a stipulation dated December 1st, 1896, signed by the counsel for the plaintiff and by the defendant's attorneys.

Received and marked Exhibit "C," which reads as follows:

"Supreme Court, Allegany County.

ALBERT L. PURDY, Plaintiff,
against
ERIE RAILROAD COMPANY, Defendant. } Actions 2 to 12.

Justice's Court, Town of Wellsville.

ALBERT L. PURDY, Plaintiff,
against
ERIE RAILROAD COMPANY, Defendant. } Actions A and B.

A motion having been made herein for the consolidation of the above-entitled actions into one action in the supreme court, it *it* is hereby stipulated by and between the attorneys for the respective parties to said actions, that such consolidation shall not affect the right of the plaintiff to recover more than one penalty in said consolidated action, but that his right to recover upon each al-
137 leged cause of action set forth in the several complaints shall be the same as if the said actions had not been consolidated, but had remained separate actions.

Dated Dec. 1, 1896.

A. L. PURDY, *Attorney for Plaintiff,*
By CLARENCE A. FARNUM, *His Counsel.*
SPRAGUE, MOOT, SPRAGUE & BROWNELL,
Attorneys for Defendant."

Mr. FARNUM: I desire to offer in evidence an order bearing date December 1st, 1896, made at the Erie county special term.

Received and marked Exhibit "D," and reading as follows:

138 "At a special term of the supreme court of the State of New York, held in and for the county of Erie, at the city and county hall, in the city of Buffalo, on the first day of December, 1896.

Present: Hon. Henry A. Childs, justice.

Supreme Court, Allegany County.

ALBERT L. PURDY, Plaintiff,
against
ERIE RAILROAD COMPANY, Defendant. } Actions 2 to 12.

Justice Court, Town of Wellsville, Allegany County.

ALBERT L. PURDY, Plaintiff,
against
ERIE RAILROAD COMPANY, Defendant. } Actions A and B.

An order to show cause having been made herein returnable on this day, requiring the plaintiff to show cause why, among other things, an order should not be made removing the above-entitled actions brought in the justice's court in the town of Wellsville, Allegany county, N. Y., before H. J. Torrey, Esq., justice of the peace, from said justice's court to the supreme court, and why such order should not further provide for the consolidation of the above-
139 entitled actions 2 to 12, both inclusive, and the above-entitled actions numbered respectively A and B into one action.

Now, on reading and filing said order to show cause, and the affidavit of George F. Brownell verified herein November 27, 1896, and the affidavit of Albert L. Purdy verified herein November 30, 1896, and upon all the papers in said action and proceedings heretofore and herein, and after hearing George F. Brownell, Esq., of counsel for defendant, in favor of said motion, and Clarence A. Farnum, Esq., of counsel for plaintiff, in opposition thereto, and on motion of Sprague, Moot, Sprague & Brownell, attorneys for defendant, it is

Ordered, that said motion be and the same hereby is granted, and that said actions A and B pending in the justice's court, in the town of Wellsville, Allegany county, N. Y., before H. J. Torrey, Esq., justice of the peace, be and the same hereby are removed and transferred from said justice's court to the supreme court in and for Allegany county, and that said above-entitled actions numbered 2 to 12, both inclusive, and said actions A and B so removed and transferred be and the same hereby are consolidated into one action.

And the attorneys for the several parties to said actions having stipulated to such effect, it is further ordered, that such consolidation shall not affect the right of the plaintiff to recover more than one penalty in said consolidated action, but that his right to
140 recover upon each alleged cause of action set forth in the several complaints shall be the same as if the said actions had not been consolidated, but had remained separate actions.

It is further ordered that with respect to the recovery and taxation of costs, said several causes of action in said consolidated action shall be treated and considered as separate actions up to the time of said consolidation, and that upon the recovery, or failure to recover, upon said causes of actions respectively the successful party shall be entitled to tax his costs up to the first day of December, 1896, the same as if said actions had not been consolidated.

And it is further ordered that in case of recovery of costs by each party, said costs may be offset one against the other."

Mr. FARNUM: I desire also to offer in evidence an order dated the 28th day of April, 1897, made at the Erie county special term.

Received and marked Exhibit "E," and reading as follows:

141 "At a special term of the supreme court of the State of New York, held in and for the county of Erie, at the city and county hall in the city of Buffalo, on the 28th day of April, 1897.

Present: Hon. Alfred Spring, justice.

Supreme Court, Allegany County.

ALBERT L. PURDY, Plaintiff,
against
ERIE RAILROAD COMPANY, Defendant. } Consolidated Action.

Supreme Court, Allegany County.

ALBERT L. PURDY, Plaintiff,
against
ERIE RAILROAD COMPANY, Defendant. } Action No. 13.

Upon consent of the attorneys for the respective parties hereto, and on motion of Sprague, Moot, Sprague & Brownell, defendant's attorneys, it is

Ordered, that the above-entitled action, viz: Albert L. Purdy, plaintiff, against Erie Railroad Company, defendant, consolidated action, and the action entitled Albert L. Purdy, plaintiff, against Erie Railroad Company, defendant, action No. 13, be, and

142 the same hereby are consolidated into one action, subject to all the conditions contained in said order consolidating said actions entered Dec. 3rd, 1896, in Allegany county clerk's office.

And the attorneys for the several parties to said actions having stipulated to such effect, it is further ordered that such consolidation shall not affect the right of the plaintiff to recover more than one penalty in said consolidated action, but that his right to recover upon each alleged cause of action set forth in the several complaints shall be the same as if the said actions had not been consolidated, but had remained separate actions.

And it is further ordered that in case of recovery of costs by each party, said costs may be offset one against the other, and the stipulation of December 1st, 1896, continued as to such consolidated action. Date of issue of such consolidated action, for placing on calendar to be same as action No. 2.

We hereby consent to the entry of the above order. Dated April 21st, 1897.

A. L. PURDY, *Attorney for Plaintiff.*
SPRAGUE, MOOT, SPRAGUE & BROWNELL,
Attorneys for Defendant."

Mr. FARNUM: I desire also to offer in evidence an order of consolidation, bearing date September 27th, 1897, made at the Erie county special term.

Received and marked Exhibit "F," and reading as follows:

143 "At a special term of the supreme court of the State of New York, held in and for the county of Erie, at the city and county hall in the city of Buffalo, N. Y., eighth judicial district, on the 27th day of September, 1897.

Present: Hon. Henry A. Childs, justice.

Supreme Court, Allegany County.

ALBERT L. PURDY, Plaintiff,
against
ERIE RAILROAD COMPANY, Defendant. } Consolidated Action.

Supreme Court, Allegany County.

ALBERT L. PURDY, Plaintiff,
against
ERIE RAILROAD COMPANY, Defendant. } Actions Numbers 14 to 19, Both Inclusive.

Upon consent of the attorneys for the respective parties hereto, and

On motion of Moot, Sprague, Brownell & Marcy, defendant's attorneys, it is

Ordered that the above-entitled actions, to wit: 'Albert L. Purdy, plaintiff, against Erie Railroad Company, defendant, consolidated action,' and the actions entitled 'Albert L. Purdy, plaintiff,
144 against Erie Railroad Company, defendant, actions numbers 14 to 19, both inclusive,' be and the same hereby are consolidated into one action, subject to all the conditions contained in the order consolidating said actions, entered December 3d, 1896, in Allegany county clerk's office.

And the attorneys for the respective parties to said actions having stipulated to such effect, it is further

Ordered that such consolidation shall not affect the right of the plaintiff to recover more than one penalty in said consolidated action, but that his right to recover upon each alleged cause of action set forth in the several complaints shall be the same as if said actions had not been consolidated but had remained separate actions.

And it is further ordered that in case of recovery of costs by each party, said costs may be offset one against the other, and the stipulation of December 1st, 1896, continued as to such consolidated action; date of issue of such consolidated action for placing on calendar to be same as action No. 2."

It is conceded by the defendant that action number 1 has been and is consolidated with the other actions upon the same terms and conditions as in stipulation read and orders entered.

MR. FARNUM: We also desire to offer in evidence stipulation bearing date May 7, 1897.

Received and marked Exhibit "G," and reading as follows:

145 "Supreme Court, Allegany.

CLARENCE A. FARNUM
vs.
ERIE RAILROAD COMPANY. } 2 Actions. Trials of Fact.

Supreme Court, Allegany County.

ALBERT L. PURDY
vs.
ERIE RAILROAD COMPANY. } 14 Actions. Trials of Fact.

It is hereby stipulated by and between the parties to the above-entitled actions, for the purpose of the trial of the issues therein,

First. The railroad of the defendant above named does not overcome an elevation exceeding three hundred feet to the mile, within a distance of two miles.

Dated May 7, 1896.

CLARENCE A. FARNUM,
Attorney for Plaintiff Farnum in Person.
A. L. PURDY,
Attorney for Plaintiff Purdy in Person.
SPRAGUE, MOOT, SPRAGUE & BROWNELL,
Attorneys for Defendant."

146 ALBERT L. PURDY, plaintiff, sworn in his own behalf, testified as follows:

Direct examination by Mr. FARNUM:

I am the plaintiff in this case; I live at Wellsville. There was a time in June, 1896, when I called at the office of the Erie Railway Company in Wellsville, and had a conversation with some one in charge of the office; I think there was a stranger in the office where the tickets were sold. (Paper shown witness.) I cannot give the date when I first had that conversation at the office, without this memorandum. Looking at this, I can tell that I had my conversation in reference to a ticket on June 26, 1896.

I went up to the place where they sell tickets and handed the ticket agent twenty dollars, with a notice like this, and stated to him that I hereby make application for and demand the issue to me or to myself and family, a mileage book, having one thousand coupons attached thereto, for the payment of which I herewith tender the sum of twenty dollars; this application is made for a mileage book, entitling the holder thereof to ride one thousand miles on your road &c. (Witness reads notice.) (Witness shown paper.) At that time I delivered to the person in charge of the office at Wellsville this paper. I have not seen this paper from the day I delivered it until the other trial of this action in October.

Paper referred to offered in evidence.

Received and marked Exhibit "H," and reading as follows:

147 "To the Erie Railway Company:

Take notice that I, Albert L. Purdy, of Wellsville, N. Y., hereby make application for and demand that you issue to me, or to myself and family, a mileage book having one thousand coupons attached thereto, for the payment of which I herewith tender the sum of twenty dollars. This application and demand is made for the mileage book, entitling the holder thereof to travel one thousand miles on the line or lines of your road, required to be issued by you, under chapter 1027 of the Laws of 1895, as amended by chapter 835 of the Laws of 1896, of the State of New York.

Dated June 26th, 1897.

A. L. PURDY."

It is conceded that this first action was commenced on the 29th day of June, 1896.

Mr. FARNUM: The complaint shows that that is for the demand made on the 26th of June.

Witness continues: The agent stated to me that they had no books. He said he could get one by making a regular application on their forms, but they kept none in the office, no books in the office. I received no books. He said they hadn't any books for sale, and I did not get any; they did not offer any. After that I called at the office again. I would have to depend upon a memorandum for the day.

(Witness shown paper.)

148 It was the 29th day of June, 1896, I went to the office. I found Mr. Gene McCarthy, the ticket agent at Wellsville, there in the office. I went to the place where they passed out the tickets, at the ticket office at Wellsville, and handed through the window $20.00 in money and a notice the same as this.

(Witness shown paper.)

This is the notice that I delivered to them, left with them. I have not seen that notice from that day up to the time of the trial of this issue in October last. I stated to Mr. McCarthy that I hereby make application for and demand, &c. I read over the paper to him, and left it with him. He took the money and counted out the $20.00 and said that they hadn't any mileage books there on sale, that I could get one by signing the application which he handed to me, and he would send it on and get the book; I do not know that he said when he would send it on; he simply said he would send it on and get the book; it would probably be two or three days before the book would get back, he said. I did not get any book. I came away; he said they did not have any there.

Notice referred to offered and received in evidence and marked Exhibit "I," and reading as follows:

"To the Erie Railroad Company:

Take notice that I, Albert L. Purdy, of Wellsville, N. Y., hereby make application for and demand that you issue, to me, a mileage

book, having one thousand coupons attached thereto, for the payment of which I herewith tender the sum of twenty dollars, lawful money of the United States. This application and demand
149 is made for the mileage book entitling the holder thereof to travel one thousand miles on the line or lines of your road, required to be kept by you, on sale, by chapter 1027 of the Laws of 1895, entitled 'An act in relation to the issue of mileage books by railroad corporations,' as amended by chapter 835 of the Laws of 1896, of the State of New York.

Dated June 29th, 1896.

A. L. PURDY."

It is conceded that the action for which the demand was made the 29th day of June was commenced the 30th of June, 1896.

Witness continues: I called at the ticket office at Wellsville again after that, on the 1st day of July, 1896. I went to the window where they pass out tickets and handed to Mr. Rigdon, who was in the ticket office there at Wellsville, $20.00, and a paper of which this is a copy, and stated to him the contents of the notice, read it over to him; Mr. Rigdon was then the station agent at Wellsville; he was acting as ticket agent. He took the money and counted it. Mr. McCarthy was in the office, too, with Rigdon. Rigdon told Mr. McCarthy to present me with the application to sign; the application was in the form of a contract; I saw it. The contract required that the one purchasing the ticket upon the application should present the mileage book issued upon it to the agent, and get a ticket from the agent, an exchange ticket, giving him the right to an exchange ticket that would be good only upon the day it was issued and for a continuous passage over the road. Mr. Rigdon did not give
150 me any mileage book at that time. He said he hadn't any there; he or Mr. McCarthy told me that, one or the other of them in the office. Mr. McCarthy gave me back the money and said that they hadn't got any books there on sale.

Notice referred to offered and received in evidence and marked Exhibit "I I," and reading as follows:

"To the 'Erie Railroad Company:'

Take notice, that I, Albert L. Purdy, of Wellsville, N. Y., hereby make application for and demand that you issue to me a mileage book, having one thousand coupons attached thereto, for the payment of which I herewith offer and tender to you the sum of twenty dollars, lawful money of the United States and which I am ready and willing to pay therefor.

This application and demand is made for the mileage book entitling the holder thereof to travel one thousand miles on the line or lines of your road, which you are required, by section 1 of chapter 1027 of the Laws of 1895, entitled 'An act in relation to the issue of mileage books by railroad corporations,' as amended by chapter 835 of the Laws of 1896, to keep on sale at this ticket office.

A. L. PURDY.

Dated July 1st, 1896."

(It is conceded that this action was commenced number 3, where the demand was made July 1st, on the 2nd day of July.)

Mr. MOOT: I ask to strike out so much of this testimony as tends to establish any cause of action for selling tickets, not complying with the statute, on the ground that this action is brought not for selling tickets not complying with the statute, but is brought for not selling tickets at all. That there is not a word in the complaint to show that these mileage books do not comply with the law.

151

Motion denied and exception taken.

Mr. MOOT: Then if it may be understood that my position is the same as to the testimony the witness shall give hereafter in the other actions, and that my exception shall apply, then I need not keep raising this point.

The COURT: Certainly.

Witness continues: At the time that I asked for that ticket, one or the other of them in the office told me that they had no mileage books on hand. I called at the office of the defendant, The Erie Railroad Company, after that, on July 3d, 1896. I went up to the place where they sell the tickets and handed a copy of this paper in through the window, with the sum of $20.00.

Witness shown paper.

This is the paper which I delivered to the railroad company; the ticket agent. Mr. McCarthy was in the ticket office, and he took the money and counted it before he handed it back to me, and presented me with a contract or application, told me that I could have the book by signing that contract, and leaving the $20.00 in the course of, I think he said one or two, or two or three days, he said they hadn't got them there, they had to send away for them. He said to me that he did not have any then on hand. He handed me back the money. I left that paper with McCarthy at that time. I never saw it from the time I left it with him until the other trial.

152

Paper referred to offered in evidence.

Received and marked Exhibit "J," and reading as follows:

To the Erie Railroad Company:

Take notice, that I, Albert L. Purdy, of Wellsville, N. Y., hereby make application for and demand that you issue, to me, a mileage book, having one thousand coupons attached thereto, entitling the holder thereof to travel one thousand miles on the lines of your railroad, for the payment of which I herewith offer and tender to you the sum of twenty dollars, lawful money of the United States and which I am ready and willing to pay therefor.

This application and demand is made for the mileage book entitling the holder thereof to travel one thousand miles on the line or lines of your road, which you are required to issue and keep on sale

at this office, by section one of chapter 1027 of the Laws of 1895, as amended by chapter 835 of the Laws of 1896.

Dated July 3rd, 1896.

A. L. PURDY.

It is conceded the action, number 4, on that demand made July 3rd, was commenced July 7th, 1896.

Q. You spoke of an application or something, a contract
153 that was presented to you to sign, was that the same in substance as the one that had been presented to you preceding?

A. It was the same form.

I called at the ticket office of the defendant, The Erie Railway Company, at Wellsville, again on July 10; I found Mr. McCarthy there. (Witness shown paper.) I handed him that paper which you now show me, with $20.00 in money, and stated the contents of this to him; I read it over to him. He said they hadn't got any books there for sale; handed me the contract to sign—application or contract, whatever you call it—the same as the others. I refused; I told him I could not sign that, and he said that by signing that and leaving the money there I could get the book in whatever time he fixed—two or three day , I think it was—in the course of a few days. He did not offer me any ticket then, or any mileage book; he said they hadn't got any mileage book for sale there; did not keep them. I did not leave my money; he counted the money and handed it back to me.

Mr. FARNUM: I offer in evidence the paper that was left with Mr. McCarthy.

Received and marked Exhibit "K," which reads as follows:

"To the Erie Railroad Company:

Take notice, that I, Albert L. Purdy, of Wellsville, N. Y., hereby make application for and demand that you issue, to me, a mileage book, having one thousand coupons attached thereto, entitling the holder thereof to travel one thousand miles on the lines of
154 your railroad, on mileage exchange ticket, for which such coupons may be surrendered, without producing such mileage book after the issuing of such ticket thereon, to the same rights and privileges to which the highest class ticket issued by you would entitle such holder, such mileage book to be good until all coupons attached thereto are used.

For the purpose of paying for such mileage book I herewith tender and offer to you the sum of twenty dollars lawful money of the United States and which I am ready and willing to pay therefor.

This application and demand is made for the mileage book which you are required to issue and keep on sale at this office by section one of chapter 1027 of the Laws of 1895, as amended by chapter 835 of the Laws of 1896.

Dated July 10th, 1896.

A. L. PURDY."

It is conceded that the action number five, where the demand was made July 10th, was commenced by the service of the summons, July 13.

Witness continues: That application that I speak about that he showed me was in substance the same as the previous one. I called at the office of the defendant again after that, in Wellsville, August 12, 1896. I found Mr. McCarthy in the office. I handed him a copy of this and stated it to him.

(Witness shown paper.)

That is the paper that I handed to him, and handed him $20.00 in money. He took the money and counted it. I also said to him,
"I came up to see if I could get a mileage book, and want
155 one." He held up that copy that I handed to him, and said, "This is your mileage book." After he had counted the money over he handed it back to me. Some time during the conversation he stated to me that they hadn't any mileage books there. I took my money and came away, and got no mileage book.

Mr. FARNUM: I offer in evidence the paper left with the agent. Received and marked Exhibit "L" and which reads as follows:

"To the Erie Railroad Company:

Take notice, that I, Albert L. Purdy of Wellsville, N. Y., hereby make application for, and demand that you issue, to me, a mileage book, having one thousand coupons attached thereto, entitling the holder thereof to travel one thousand miles on the lines of your railroad. For the purpose of paying for such mileage book I herewith tender and offer to you the sum of twenty dollars lawful money of the United States, and which I am ready and willing to pay therefor.

This application and demand is made for the mileage book which you are required to issue and keep on sale at this office by section one of chapter 1027 of the Laws of 1895, as amended by chapter 835 of the Laws of 1896.

Dated Aug. 12th, 1896.

A. L. PURDY."

Witness continues: I never saw that paper from the time I left it with him till the other trial.

156 It is conceded that action number 6, wherein the demand was made August 12, was commenced August 13, by the service of the summons upon the defendant.

I called at the office of the defendant railroad company again on the 15th of August, 1896. Mr. McCarthy was there. I handed him a copy of this paper and stated the contents of it to him. That is the paper I handed to him, with $20.00 in money. He took the money and counted it and he said that they must have coin; I stated to him that those were legal-tender notes that I handed to him, and they were legal-tender notes, and as such I tendered him

the $20.00 for the mileage book. He handed me one of the blank applications. I called his attention then, as I had at other times, to the clause which I deemed objectionable. He said they hadn't any books there on sale in that office, and did not give me any; handed me back the money after he counted it. That is the paper I delivered him at that time and left with him, that you just showed me; I handed that to him and left it with him.

Paper referred to offered in evidence.

Received and marked Exhibit "M," and reading the same as Exhibit "L," except that after the words "Laws of 1895," there is inserted the following: "entitled 'An act in relation to the issue of mileage books by railroad corporations;'" and the notice is dated "August 15, 1896," instead of "August 12, 1896." It is conceded that action number 7, wherein the demand was made August 15, was commenced by the service of the summons on the defendant, August 17.

157 Witness continues: I called at the ticket office of the defendant again in Wellsville, on August 22nd. I found Eugene McCarthy in the office. I handed him a copy of this with the sum of $20.00 in money. (Witness shown paper.) That is the paper I handed him, and left it with him; I stated to him further, that I wanted a mileage book; he took the money and said he would keep it. He presented me with one of the same form of printed applications, and I told him that I objected to some of the provisions of the contract, and he took the contract back, and after he had counted the money handed it back to me, did not give me any book. He said they hadn't any there. I did not get any.

Mr. FARNUM: We offer in evidence that paper left with the agent.

Received and marked Exhibit "N," and which reads the same as Exhibit "M," except that the notice is dated "August 22nd, 1896," instead of "August 15, 1896." It is conceded that action number 8, wherein the demand was made August 22, was commenced on August 24th, by the service of a summons upon the defendant.

Witness continues: I called at the ticket office of the defendant railroad company again, upon the 25th of August. I found Mr. McCarthy there; I handed him a copy of this paper. (Witness shown paper.) That is the paper with the sum of $20.00 in money, and stated to him the contents of it. He took the money and counted it, said he hadn't got any books there, counted the money and handed it back to me. I left with him this paper; did not get any mileage book.

158 Paper referred to offered in evidence.

Received and marked Exhibit "O," and which reads the same as Exhibit "M," except that the notice is dated "August 25, 1896."

It is conceded that action number 9 wherein the demand was made August 25, was commenced by the service of a summons on the defendant, August 26.

Witness continues: I called at the ticket office of the defendant railroad company again on the 27th of August; I found Mr. McCarthy there. I handed him a copy of this and stated to him the contents of it. (Witness shown paper.) That is the paper I handed him and left with him. He took the $20.00 and counted it and he said, "I do not think we have got what you want." He handed me a contract, the same as he had before, the same form. I looked it over and handed it back. I told him that there were provisions in there in conflict with the law, that is, I thought they was, and after counting the money he handed it back to me; he said they hadn't any books on hand; hadn't any books there, and I came away.

Paper referred to offered in evidence.

Received and marked Exhibit "P," and which reads the same as Exhibit "M," except that the notice is dated "August 27, 1896."

It is conceded that action number 10, wherein the demand was made August 27, was commenced by the service of a summons upon the defendant, August 28th.

159 Witness continues: I called at the ticket office of the defendant again on the 31st of August, 1896. I found Mr. McCarthy there; I handed him a copy of this with $20.00 in money, stated the contents of it to him. He handed me out what he called a mileage book, and said if that was satisfactory he would make it out. I asked him if the contract attached must be signed and he said "yes;" I told him the contract was not what was required; that the conditions of the contract did not bring the books within the terms of the law; I told him that I could not sign that contract, and he counted the money and handed the money back to me.

Q. I show you what purports to be a book of the Erie, and ask you if that was a book similar to that?

(Counsel presents book to witness.)

A. Yes, sir; a similar contract. The contract was the same as that.

Mr. FARNUM: We desire to offer that in evidence.

Mr. MOOT: I object, your honor. This presents my question fairly too. I object upon the ground that the complaint in this action in which this book is offered in evidence alleges no book and no defect in any book, but instead alleges that we refused to sell any book at all, and therefore my position is that they cannot bring us here to try a cause of action for not selling any book at all, and ask to recover a penalty from us on that ground, and then come here and admit that we offered to sell them a book, but say that the book does not comply with the law. My position is that when they
160 claim we sell a book which does not comply with the law they must allege that in the complaint, they must point out the defects upon which they may rely as showing a breach of the law, and a right to recover a penalty of us.

The COURT: It seems to me the plaintiff may prove anything that took place at the time of the demand; any answer whatever that

was made by the company which tends to show that the company refused to comply with the statute by furnishing such a book as the statute required them to furnish. Therefore I think this evidence is competent.

Mr. MOOT: Your honor will note me an exception?

The COURT: Certainly.

Mr. FARNUM: I desire to offer that portion of the book only, which contains the contract proper.

Mr. MOOT: I object to that, if the book goes in I must insist it is a part of the transaction and we must have the whole.

The COURT: Yes, you had better put it all in.

Mr. FARNUM: Then we offer the book.

Received and marked Exhibit "Q," and reading as follows:

"Erie Railroad Company.

No. 1895.

New York State.

1,000-mile book.

161 Notice to persons to whom this book is issued.

This book is good only in exchange for transportation wholly within the State of New York.

This book will not be accepted for passage on trains, but must be presented by original purchaser to ticket agent at point of departure, who will issue continuous train ticket to destination.

Read carefully the rules and regulations on inside of back cover and page next preceding same, which must be signed in ink.

.....

Erie
Railroad Company.
New York State
1,000-mile book No. 1895.
Issued to
Mr. C. A. Farnum
of Wellsville, N. Y.

(Whose signature appears on inside of back cover.)

Good in exchange for mileage exchange tickets for 1,000 miles of transportation on the lines of the Erie Railroad Company in the State of New York when officially stamped and presented in accordance with the rules and regulations printed on inside of back cover of this book and on page next preceding same, which rules and regulations are made part hereof.

The coupons contained in this book will only be received for mileage exchange tickets if presented by original purchaser at regular ticket office of the Erie Railroad Company in said State.

162 This book is worthless if it has any alterations by erasure or otherwise.

D. I. ROBERTS,
General Passenger Agent.

Not good unless stamped here by issuing agent.

(Stamped:) Erie R. R. Co.,
Dec. 7, 1896,
Wellsville, N. Y.

Erie.
993—1895—1 mile.
Good only in State of N. Y.

Erie.
994—1895—1 mile.
Good only in State of N. Y.

Erie.
995—1895—1 mile.
Good only in State of N. Y.

Erie.
996—1895—1 mile.
Good only in State of N. Y.

Erie.
997—1895—1 mile.
Good only in State of N. Y.

Erie.
998—1895—1 mile.
Good only in State of N. Y.

163

Erie.
999—1895—1 mile.
Good only in State of N. Y.

Erie.
1,000—1895—1 mile.
Good only in State of N. Y.

Rules and Regulations.

This 1,000-mile book is sold by the Erie Railroad Company and purchased and used by the person named hereon under and in accordance with the following rules and regulations, viz:

1st. It is not good for passage on trains, but the mileage coupons contained herein will be accepted by agent at station ticket office at starting point within the State of New York in exchange for mileage exchange ticket from such starting point to any point in said State at which trains are regularly scheduled to stop, provided that the journey is wholly within the State of New York and that the book is presented by the person named hereon to said agent a reasonable time before departure of the train on which the journey is to be commenced. Ticket agent will detach one coupon for each mile or fraction thereof of distance from starting point to destination.

2nd. The mileage exchange ticket issued by ticket agent in exchange for mileage coupons hereof is subject to all the rules and regulations of this mileage book, and will be good only for a continuous passage on date of issue and wholly within the State
164 of New York, and will not permit stop-over. Said mileage exchange ticket shall only be good for the transportation of the person named thereon, and such person shall be either the original purchaser of this book or a member of his or her family or firm, or a salesman of such firm.

3rd. This mileage book is not valid, nor the coupons attached to it unless book is stamped by selling agent and signed, in ink, by the purchaser, whose signature must be witnessed by said selling agent.

4th. When all the coupons have been detached from this book, the cover hereof will be taken up and retained by the ticket agent issuing mileage exchange ticket for the last mileage coupons. Said ticket agent will forward the cover to auditor of traffic with his report.

5th. This mileage book and the mileage exchange tickets issued hereunder are absolutely non-transferable. If the mileage exchange ticket is presented on the train by any other than the person named thereon or if the person presenting it is not the original purchaser of the mileage book upon which it was issued, or a member of his or her family or firm or a salesman of such firm, it is void and forfeited, and the conductor is hereby authorized by such purchaser to take up such mileage exchange ticket and collect full fare.

6th. Said purchaser agrees to establish his or her identity and the identity of any person for whom a mileage exchange ticket is applied for hereunder, as a member of his or her family or firm
165 or a salesman of such firm, by written signature, or certificate, signed by him or her or other means when required so to do by any ticket agent to whom this book is presented, and further agrees in case of application for mileage exchange ticket for a member or a salesman of his or her firm, to give the ticket agent to whom such application is made, the name and place of business of such firm. The person presenting a mileage exchange ticket issued hereunder shall establish his or her identity as the original purchaser of

this book, or as a member of the family or firm of such original purchaser or as a salesman of such firm, by certificate signed by him or her, or other means, when required so to do by any conductor or baggage agent to whom same is presented.

7th. No extention of time limit of any mileage exchange ticket issued hereunder or refund for unused coupons of this mileage book will be granted.

8th. Coupons of this book will not be received in exchange for a mileage exchange ticket unless they have been detached by the ticket agent.

9th. Mileage exchange tickets issued in exchange for coupons taken from this mileage book will not be issued to any point which is not designated on the time card as a regular stopping place for trains, and will be good for passage only on trains which are advertised to stop at stations named therein and for a continuous passage between such stations.

10th. Baggage will not be checked on this book, but only (subject to this company's baggage rules) on mileage exchange ticket issued in exchange for the mileage coupons hereof.

166 The undersigned purchases and accepts this book subject to the above rules and regulations, which he or she has read and fully understands, and hereby agrees to abide by in all respects.

C. A. FARNUM, *Purchaser.*
C. H. ALLEN, *Witness.*

December 7, 1896."

Witness continues: Mr. McCarthy showed me this book. The agent said that I should sign the book, or sign the contract. After he counted the money he handed it back to me and I came away.

Mr. FARNUM: I offer in evidence the paper which he delivered to Mr. McCarthy on the 31st day of August, 1896.

Received and marked Exhibit "R," and which reads the same as Exhibit "M," except that the notice is dated "August 31st, 1896."

It is conceded that action number 11, wherein the demand is made August 31st, that the summons was personally served on the defendant, October 30, 1896.

Witness continues: On the 7th of November, I called at the ticket office of the defendant in Wellsville; I found Mr. McCarthy there. I handed him, through the window, a copy of this paper.

(Witness shown paper.)

167 That is the paper; I delivered it to him, with $20.00 in money, and stated the contents of it to him. He offered me a mileage book of the same form; that is, opened it up, handed out a mileage book of the same form, opened at the contract; the same form as this just put in evidence, Exhibit "Q."

Mr. MOOT: Your honor, I suppose all these books may be under the same objection and exception in each case without my repeating it continually?

The COURT: Certainly; the stenographer may make a memorandum of that.

WITNESS: I asked him if the contract had got to be signed and he said it had. He counted the money and handed it back to me. I first told him that I could not sign the contract, and left with him this paper.

Paper referred to offered in evidence.

Received and marked Exhibit "S," and which reads the same as Exhibit "M," except that the notice is dated November 7th, 1896.

It is conceded, subject to correction, that action numbered 12, in which the demand was made November 7, was commenced by the service of a summons upon the defendant November 9.

Witness continues: I called at the ticket office of the defendant again upon the 12th day of November. I found Mr. McCarthy, the ticket agent, there in the office. I handed him a copy of this paper with $20.00 in money. (Witness shown paper.) That is the
168 paper I handed to him and left with him, and stated the contents of this to him. He handed out a book opened up at the contract, the same as the other, the same as Exhibit "Q," and said, "Sign that;" I told him that that was not what the law required, and refused to sign it. He took the book back and after counting the money, he handed the money back to me and I came away, and did not get my book.

Mr. FARNUM: We offer in evidence the paper left upon that day.

Received and marked Exhibit "T," and which reads the same as Exhibit "M," except that the notice is dated "November 12, 1896."

It is conceded that the action number "A" commenced in justice's court, wherein the demand was made November 12th, was commenced November 12th, by the service of the summons upon the defendant.

Witness continues: I called at the ticket office of the defendant again on the 14th day of November. I found there some one who was inside of the office that I did not know; he was a stranger to me. I handed in a copy of this paper. (Witness shown paper.) That is the paper which I left with the person in charge, with $20.00 in money, and he took the money and counted it and handed a book opened up at the contract, and told me I would have to sign that; a book the same as "Q." I told him I could not sign that, and he handed me back the money; I did not get a mileage book.

169 Paper referred to offered in evidence.

Received and marked Exhibit "U," and which reads the same as Exhibit "M," except that the notice is dated "November 14, 1896."

It is conceded that action "B," commenced in justice's court, wherein the demand was made on the defendant Nov. 14, was commenced Nov. 14 by service of summons upon the defendant.

Witness continues: I called at the ticket office of the defendant again upon the 17th day of November, 1896. I found Mr. McCarthy, the ticket agent. I handed him a copy of this paper, with

$20.00 in money, and he took the money and counted it and I stated the contents of this to him. He shoved a book through the window, open at the contract, the same as that Exhibit "Q"; I said to him that I declined to sign that contract, to keep the book, and he shoved the money back to me, did not give me any mileage book, and I went away.

Paper referred to offered in evidence.

Received and marked Exhibit "V," and which reads the same as Exhibit "M," except that the notice is dated "November 17, 1896."

It is conceded that action number 13, wherein the demand was made November 17, was commenced March 12, 1897, following.

Witness continues: I called upon the defendant July 28th, 1897. I found Mr. McCarthy in the office. I handed a copy of this
170 paper to him with $20.00 in money, and stated the contents of it; he presented a book open at the contract, the same as "Q," and I told him that I declined to sign the contract; he said it was necessary to sign the contract. He handed me back the money and I came away. (Witness shown paper.) That is the paper that I delivered to him at the time.

Paper referred to offered in evidence.

Received and marked Exhibit "W," and which reads as follows:

To Erie Railroad Company:

Take notice, that I, Albert L. Purdy, of Wellsville, N. Y., hereby make application for and demand that you issue to me a mileage book having one thousand coupons attached thereto, entitling myself, family, etc., to travel one thousand miles on the line or lines of your railroad, as required by chapter 1027 of the Laws of 1895, as amended by chapter 835 of the Laws of 1896, as amended by chapter 484 of the Laws of 1897, upon surrendering the coupons, as provided by said act.

For the purpose of paying for such mileage book I herewith tender the sum of twenty dollars, lawful money of the United States, which I am ready and willing to pay therefor.

Dated July 28th, 1897.

A. L. PURDY.

WITNESS: I did not get my book.

It is conceded that action number 14, wherein the demand
171 was made July 28, 1897, was commenced by the service of a summons upon the defendant July 29, 1897.

WITNESS: On the 31st of July, I called at the office of the defendant again. I found Mr. McCarthy there. I handed him a copy of this paper with $20.00 in money and stated the contents of it to him. He handed me out a book the same as Exhibit "Q," and I asked him if I had got to sign the contract, and he said that I could have it without signing it if I wanted it. I asked him if it would be good without signing it, and I do not think he made me any reply to that. I called his attention to the front of the mileage book, where it said it would not be good unless it was signed, and I do not think he

made any reply to that. I told him that I did not believe I wanted the book, and handed it back to him and he gave me back the money; I came away.

(Witness shown paper.)

That is the paper that I delivered to him at that time. I have not seen that from that time up to the time of the trial of the issue here before.

Paper referred to offered in evidence.

Received and marked Exhibit "X," and which reads the same as Exhibit "W," except that the notice is dated "July 31st, 1897."

It is conceded that action number 15, wherein the demand was made July 31, 1897, was commenced August 2nd, 1897, by the service of a summons upon the defendant.

172 WITNESS: I called at the ticket office of the defendant in Wellsville on August 5th, 1897. I found Mr. McCarthy there; I handed him a copy of this paper. (Witness shown paper.) That is the paper that I handed him, and left with him, with $20.00 in money. He handed me out a mileage book, the same form as Exhibit "Q," and I said to him, "This is not such a book as is required by the statute." He said, "Then I suppose you want back your money." I said, "You have not got such a book as required," and then I asked him if that was all the kind he had, and he said it was. He handed me back the money and I came away.

Paper referred to offered in evidence.

Received and marked Exhibit "Y," and which reads the same as Exhibit "W," except that the notice is dated "August 5, 1897."

WITNESS: I think there was something said about signing the contract, in that interview that I had with him at that time; I think I asked him if I had to sign the contract to get the book, and he said I did.

It is conceded that action number 16, wherein the demand was made August 5, was commenced August 6, by the service of a summons upon the defendant.

WITNESS: I called at the railroad ticket office of the defendant at Wellsville, on August 7th, 1897. I found Mr. Allen there, the station agent. I handed him a copy of this and stated the contents to him and handed him $20.00 in money; he took the money
173 and counted it. He handed me a book the same as Exhibit "Q," open at the contract and asked me to sign it. I asked him if I would have to sign the contract, and he said I would. He said that was all the book they had. After counting the money he handed it back to me and I came away.

Witness shown paper.

That is the paper that I handed Mr. Allen at that time, and left it with him.

Paper referred to offered in evidence.

Received and marked Exhibit "Z." and which reads the same as Exhibit "W," except that in place of the word "therefor," at the end of the notice, the words "for the same" are used, and the notice is dated "August 7, 1897."

It is conceded that action number 17, wherein the demand was made August 7, was commenced August 9, by the service of a summons upon the defendant.

WITNESS: I called at the ticket office of the defendant upon the 11th day of August, 1897. I found Mr. McCarthy there. I handed him a copy of this typewritten paper.

Witness shown paper.

That is a copy of the duplicate. With $20.00 in money and stated the contents of this to him; he handed me a book the same form as Exhibit "Q," and stated to me that that was what I wanted.
174 I started to read the contract and he said he guessed he would not let me read it, and took it back out of my hand. I think that book was a different-colored one. I think that was a blue-covered one, about the same form of contract. I think the form of contract was the same. I think the contract is the same as that, so far as I could observe it. He did not let me read the contract through, I just had it in my hands long enough to glance at, I think, about the first paragraph, and I think there was the same number of paragraphs, and I think they were the same from what I glanced at the face of it.

MR. MOOT: I ask your honor to strike that out.

THE COURT: He says as far as he read, it was the same. That is all there is of his answer.

MR. MOOT: Very well, if your honor so construes it.

WITNESS: He took the book out of my hands. He stated to me that that book was good for a ride on a ticket at any time, and good for a stop-over. He then asked me if I wanted it, and I stated to him that I wanted a book to conform to the statute. I then asked him if he was going to issue me such a book as required. He said, "Wait until this train goes on; will then talk the matter over." When I handed the money in I left it where he could reach it. He did not offer me any book; no, he offered me a book the same as the one before, that "Q," afterwards. I did not wait until after the train left; I stated to him if he had a book to conform to the statute I wanted it. He didn't offer me any book; asked me if I
175 wanted a book made out. I again stated that if it conformed to the statute I wanted it. He didn't hand me any, and the money lay inside where I could reach it and he went away. I took the money and came out; did not get any book.

Paper referred to offered in evidence.

Received and marked Exhibit "A 1," and which reads the same as Exhibit "W," except that the notice is dated "August 11th, 1897."

It is conceded that action 18, wherein the demand was made August

11, was commenced August 13, by the service of a summons on the defendant.

Q. That book that was shown you at that time upon August 11th, did you observe that book far enough to discover whether it had anything about stop-over privileges or not, if so state what you did observe?

A. I think that was the same as that——

Objected to by defendant's counsel.

Q. Did you read it far enough to see?
A. That is the one, the blue cover.
Q. The last one you are speaking of?
The COURT: The last one, he says, was just "Q."
Q. Well, the blue-covered one?
Mr. MOOT: I submit on what the witness states, that he only read the first paragraph, that it is purely speculative and an opinion.
176 The COURT: He asks whether he read it far enough. It may have been in the same paragraph.
Received and exception taken.

A. I do not think I read that far. August 28th, 1897, I called at the ticket office of the defendant in Wellsville. I found Mr. McCarthy there. Mr. Allen was also there, the station agent. I handed him a copy of this with $20.00 in money.

Witness shown paper.

That is the paper I handed him; stated the contents of this. I further stated to him that I wanted a mileage book to conform to the statute. Mr. McCarthy handed me a book, and I stated to him that "what I want is a book to conform to the statute." We talked a few minutes, that I have no memorandum of and I cannot recall what was said, and he handed me back the money and I went away.

The book he offered me was the same as "Q" there, I think; the same as is put in evidence. He took me inside the ticket office at that time and that contract, in addition to what there was there had some matters stamped on the face of the contract making it good to members of the family or firm, and I asked him about what his instructions were in regard to selling that book and he said the instructions on the book were all that he had; my recollection now is that that book was also one of those blue-covered ones. I read the contract in that; I think that was the same as the one in "Q."

Paper referred to offered in evidence.
177 Received and marked Exhibit "B 1," which reads the same as Exhibit "W," except that the notice is dated "August 28th, 1897."

WITNESS: I declined to sign the contract and he handed the money back to me.

It is conceded that action number 19, wherein the demand was made August 28, 1897, was commenced August 31st, 1897, by the service of a summons upon the defendant.

WITNESS: All of these demands which I have testified to as being made by me to the defendant for mileage books were those made in the village of Wellsville, at the ticket office there. I have seen used a mileage book like Exhibit "Q" at the railroad company's office, at Wellsville, and here in Belmont, and Olean.

Q. You may state what the practice is with the railroad company, as you have observed it, in reference to the usage of a mileage book like this Exhibit "Q."

Mr. MOOT: That I object to.

The COURT: Objection sustained.

Q. I would ask you if on the presentation of a mileage book, if anything was issued by the company or any of its officers.

Mr. MOOT: That I object to.

The COURT: I do not see how it is important.

178 Mr. FARNUM: I want to show the form of the mileage slip that they use. We would like to have placed in evidence just what the company do issue.

The COURT: I think I must give you the exception.

A. Yes, sir.

Mr. FARNUM: So that we may bring the matter up I show you a paper and ask you if that is a paper or slip that was issued to you by the ticket agent of the defendant company at Wellsville, New York.

Counsel presents paper to witness.

Mr. MOOT: I object; there is nothing of the kind alleged, and it is not competent to prove it under the complaint as it stands in this action.

The COURT: I suppose the paper you show the witness is such a ticket as the company issues to a person presenting a mileage book at the office.

Mr. FARNUM: That is what we purpose showing.

The COURT: The objection is sustained.

Paper referred to marked Exhibit "C 2" for identification.

Excluded and exception taken by plaintiff's counsel.

WITNESS: I do not recollect independent of the memorandum, what time of day it was when I made the demand for the mileage book upon which action No. 2 is brought. There is a memorandum mark made on it at the time, I can tell from that.

Witness shown paper.

179 That is the memorandum; the memorandum was made at 3.45 in the afternoon. At the time that I made each of these demands and tendered the sums that I say I did, the kind of money that I produced was United States legal-tender notes; that is, the United States notes and Treasury notes, and silver in two or three cases, I think, or partly silver in two or three cases.

Witness shown ticket.

I have seen that ticket before; that was issued to me at Wellsville. I presume that is the one I gave you yesterday.

Q. Did you ever use it for passage?

Objected to by defendant's counsel.

Q. Did you ever use it for passage upon the railway of The Erie Railway Company, defendant?

Mr. MOOT: I object. I assume what counsel now seeks to do is what he sought to do when we were here before, that is to prove the usage of the defendant, or its practice on some other occasion, and this a later occasion in respect to its tickets and its passengers. Nothing of the kind is alleged in his complaint; we came here to try no such issue before and we have come to try no such issue now, and I submit under the complaint as it stands no such issue is before the court, and therefore no evidence upon such an issue is competent.

Mr. FARNUM: I will follow this up, your honor, with proof
180 that *as* the railroad company issued this class of tickets and gave certain rights and privileges to the holder of it from the time we commenced each and every of these actions till the ending.

The COURT: What is the importance of it.

Mr. FARNUM: The importance of it is that the defendant company issue a ticket that gives the passenger different rights of a higher credit and character as to the transportation of that passenger than those they offer us by the issuance of this mileage book.

The COURT: I sustain the objection.

Exception taken.

Ticket referred to offered in evidence.

Excluded and exception taken.

Marked for identification D 1.

Mr. FARNUM: Now, I desire to raise the question that by the amended pleading or by the order that was made in this case at the Erie county special term on the 6th day of December last, that our complaints were amended so that we are entitled to show these matters by the amended complaint.

Mr. MOOT: I say, until they prove that they tendered money or paid money under the order, or by it, the order gives them no relief whatever.

The COURT: I suppose this matter can all go into the record by way of an agreement, and I will state it as I got it from the
181 papers the other day, and if I am not correct about it you can correct it. It is conceded by the parties that after the making and entry of the order directing the amendment of the complaints herein on the 7th day of December, and on the 14th day of December, then instant, the plaintiff procured a draft payable to the order of the attorneys for the defendant, drawn by a solvent bank at Wellsville, New York, upon a solvent bank or moneyed institution in the city of New York—for the sum of $55.75, that being the amount of costs awarded by the order of the court to said defendant's attorneys as a condition of the amendment of said complaints; that said draft reached Mr. Moot, one of the defendant's attorneys,

at his office, in the city of Buffalo, on the 16th day of December, then instant, he having been absent from his office on the 15th. That immediately upon the receipt of said draft, said Moot representing the defendants returned the same by mail to the plaintiff or his attorney with notice enclosed that he declined to accept said draft as money or in payment of the costs so awarded by said order. That thereafter, and on the 18th day of December, and upon the receipt of said communication and draft from said Moot, the plaintiff procured the sum of $56.00 in legal-tender notes of the United States, and transmitted the same by express to said defendant's attorneys at Buffalo, New York. That upon the receipt thereof by said defendant's attorneys, they returned the same to said plaintiff or his attorney, with notice that they declined to receive the same upon the ground that it was not paid within the time provided in the order. That the order was dated on the 6th day of Decem-

182 ber, and entered in the clerk's office of Allegany county on the 7th day of December. That by due course of mail, a letter mailed at the post-office in Wellsville, New York, the point where the letter above referred to was mailed, would reach the party to whom the same was directed, in the city of Buffalo, on the morning or afternoon of the next day. That the note enclosed with the draft by Mr. Moot to the plaintiff was dated December 16th; that the envelope enclosing the same was postmarked Buffalo, December 17, 4 p. m. That by due course of mail a letter mailed in Buffalo at the general post-office would reach Wellsville, the residence of the plaintiff and his attorneys, during the day succeeding such mailing.

Mr. FARNUM: Now, with these concessions I reoffer first the mileage slip.

The COURT: I will give you a ruling on this question, that is what you need, I suppose, to raise this if you want to raise it ever.

Upon the concessions of the parties, the court holds and decides that the order of December 6th, 1897, never became operative, and the complaints amended as therein provided upon the ground that the costs imposed by the order were not paid by the plaintiff within the time limited by the order, and that by the terms thereof, therefore, the motion for an amendment of the complaints was denied.

Mr. FARNUM: To which the plaintiff desires to except.

Cross-examination by Mr. MOOT:

183 Q. Mr. Purdy, how long have you been a lawyer?

A. I was admitted and signed the rolls in Buffalo in June, 1861. I have practiced in Richburg, Allentown, and Wellsville. In Richburg about a year and a half, in Allentown about two years, in Wellsville since about the 1st of December, 1884. I am forty-four years old. Before I was admitted to practice law, I was born on a farm, worked at farming.

Q. Do you mean to say you were farming before you began to practice law or study law?

A. No; not entirely. I worked at lumbering some; also running a store for a couple of years, or a year and a half, at Grant station, west of Jamestown. That is about all I have done, I think. My first practice as a lawyer, to amount to anything, was in Richburg, my next in Allentown, and the last in Wellsville. Aside from practicing law in Richburg, I was police justice there, and interested in oil wells some. I was police justice there a year or a little over, somewhere about that. I do not think of any office I have ever filled since, excepting inspector of election and notary public. I have traveled over the Erie railroad line; I could not tell you to what extent. I have been as far east as New York city over the Erie line; I have been as far west over those lines as Meadville, Oil City; I don't know which is the farthest west. I have traveled on the Erie lines enough to know that they run through New Jersey and Pennsylvania as well as New York.

Mr. FARNUM: We concede that fact that the line runs through the sister States.

Witness shown map.

184 The Erie lines I refer to are the Erie lines, as far as I have traveled on them, described, indicated, on this map you show me.

Map referred to offered in evidence by defendant's counsel.

(Received and marked Exhibit No. 1.)

(A copy of said Exhibit No. 1 is to be printed as a part of this case.)

WITNESS: Nobody is interested with me in these actions. I brought them entirely on my own hook and my own responsibility. I have never made any agreement or arrangement to divide what I may recover in them with anybody; I never talked any such thing with any one. I don't know whether or not I had a mileage book the first year that I went into Wellsville and began these operations, when I made the first tender, as I claim.

Q. Had you ever owned any up to that time?

A. Yes, sir. I don't know how many; more than four; five.

Q. Six?

A. Well, I think so, but I wouldn't be certain about that.

Q. Well, we have got to about the limit.

A. I do not know whether we have got to the limit or not. I do not know how much of the last mileage book I had left when I made the first tender in this action; I do not know that I had any; I haven't any recollection upon that point. I cannot remember whether I had any or not. I do not know where I was going when I
185 made this first tender. I do not know whether I intended to go anywhere at that time. I do not know whether I bought a ticket and went anywhere that day. I took my money and went back. I do not know whether I went anywhere that day except to my office. I do not know whether I went out of Wellsville that day or not. I cannot remember whether I traveled on the Erie road that day or not. I have no recollection of having done so.

Q. You have no recollection of having intended to do so when you made your tender, have you?

A. I have no recollection of intending to do so that day.

Q. And is that answer true as to each of these other tenders that you have testified about?

A. Well, I recollect that there was some time or times that I came here to Belmont upon the day that I made the tender, but that time or times I do not recollect.

Q. In giving your testimony you speak each time as I observe it, of taking your money and going back to your office?

A. No, sir. I did not mention anywhere in the testimony I gave that I took the train and went anywhere.

Q. Can you remember that you did take a train and go anywhere on a single occasion that you made one of these tenders?

A. Not at the time of making the tender.

Q. Can you remember that on the day of making the tender, on a single one of these occasions, you took the train and went anywhere?

A. Yes. I cannot state which day it was. I went here to Belmont.

186 Q. That was one occasion?

A. I think there were more than one occasion. I would not be certain of more than one; I will be certain of one occasion when I went to Belmont. There was one day on which I made a tender that I came to Belmont; I think it was after the making of the tender. I could not say whether I came on a mileage book I already owned or on a ticket that I purchased. After making these tenders I did go there and buy and accept a mileage book; I purchased a mileage book; that was a mileage book in the form of Exhibit "Q." I signed the contract to get that book. I used that book. I could not tell you how many books like Exhibit "Q" I bought and signed the contract for and used, after making this first tender; more than one. I did not use them all up except in one case, but I purchased more than one. I transferred my book to some other person, after I had used some out of it. I could not tell you how many books like Exhibit "Q" I bought that I transferred to other people; more than one; two.

Q. Three?

A. I think so, but I would not be certain of it. As near as I can remember I bought three that I used some of and then transferred to other people.

Q. How many did you buy like Exhibit "Q" that you used yourself without transferring to other people?

A. I used a portion of all of them. I did not buy any that I did not use in part. I bought just one that I used in whole or in part that I did not transfer to anybody. I think there is a cover and a few leaves in it left. I think that was the one put in evidence here.

187 Q. Exhibit "Q"?

Mr. FARNUM: I do not think Exhibit "Q" was the one.

Q. I will help out a little, here is Exhibit "Q," which seems to have been issued to Mr. Farnum.

A. No, sir; that is not mine. That was not issued to me.

Q. I show you one here issued to yourself June 3, 1897. Is that the one you have in mind?

Counsel presents paper to witness.

A. Yes, sir; that I used and did not transfer to others; I did not transfer that to any one. All these books that I bought and used or transferred to others, I signed the contract in the book, and did as they requested me to do in these cases where I made tenders. The conditions I would not comply with in cases where I made tenders I did comply with in cases where I purchased books. I do not remember what this money was that I made my tender with, in any particular case. I never made my tenders in gold; it was always in bills or silver. Some of it was what we call greenbacks. None of it was coin notes. There was none of it in gold certificates or silver certificates or national bank notes; I did not keep the tender good in any case; that is, I did not leave any money there. I kept the money so that I would have had it to give if they had sent me word that the book was ready the next day or the day after; I had the money the next day or the day after. I do not think I used the same money in making the tender from day to day. I will swear
188 that I did not wholly. I will swear that I did not use the same $20.00 where I made a tender two days in succession in making that tender; because I got it out of the bank each time and I do not think it was the same money. I went to the bank each time and got the money and made a tender, and then went and returned it after I made the tender. I did not borrow the money of the bank to make the tender; drew it out of the bank to make the tender. I had an account there in the bank.

Q. Your account was good for the $20.00 at all time?

A. Well, it was good for $20.00 whenever I got it. I had the money there.

Q. Yes, but how did you get the maney there, borrow it?

A. No, sir. I have some memorandums here from which I testify. In some cases they throw some light on the tenders, except that the tender was made. I do not think I read all that there was on those memorandums while I was testifying yesterday, not in all of them. I think I omitted some of my memorandum in giving my testimony; I think not in each instance. The memorandum that I was testifying from yesterday was made on the copies of the papers, the paper that I handed to the ticket agent with the money, the copy that my counsel and I had while the testimony was being given. I could not have given that testimony without this memoranda. In the main, I cannot recall the facts without those memoranda. I made that memorandum at the time that I made the demand; within a minute or two afterward, or five minutes. I made the memoranda in the waiting-room of the depot, immediately
189 after I got through talking with the agent; before I left the depot, in every case except two or three cases; and those I made within five minutes after we had finished.

Memoranda referred to produced by plaintiff's counsel.

This memorandum for action one is in ink. I had a fountain pen there to write it down.

Q. I see that the words "or to myself and family" in the notices are written in in ink, and that there has been an erasure down below "Laws of 1895." Can you explain those?

A. That I do not know. I do not remember about those. Whatever there is on this paper, including the date and my signature above, appears upon the one left with the agent.

Witness shown Exhibit "I."

There is no erasure or hyphen there indicating that there had been anything else in that. I have no family except my father and sister. I help take care of them; it is the only family I have. They do not live with me.

Q. They cannot be called your family in the sense in which we ordinarily use the word.

A. Well, I have to support them. They are a hundred miles or more away from me. As to whether I would hardly call my father and sister, living a hundred miles away, by themselves, a part of my family, that really would be a question. I consider them so. I live alone at Wellsville, and have all these years, except three
190 years they were there. It is about ten or eleven years, I think, since my father and sister have been with me at Wellsville.

Q. Then, in all fairness, do you not think we might say that you have no family except yourself?

A. Well, I considered them a part of my family, but then, they may not be. I do not make any contention on that point, whatever. In action number two, all that there is in the way of memoranda on that notice, as it reads there, is, "Made demand and application at 3 o'clock and 45 minutes, p. m., Eugene McCarthy in the ticket office." Anything more than that is outside of any memoranda. In number three, my memoranda on that is: "Made demand at 11 o'clock 15–20 minutes a. m." That indicates it was fifteen to twenty minutes. "July 1st, 1896, McCarthy, ticket agent, and Rigdon, station agent, present. Shoved $20.00 through slot and asked for mileage book, and handed through copy of this paper; taken by McCarthy with money, and Rigdon says, 'Present him with application to sign.' The application was contract with numerous restrictions." I think that is what it is meant for. "McCarthy gave me back money. I says, I understand you have no books on sale. That is what I want. Such as required by the law to be kept on sale. Rigdon says, We have no books except the one this application calls for. You can sign the application, leave your money and get the book."

Q. That is a faithful memorandum of what occurred, as near as you could make it, at the time?

A. Well, it might not have been all. As a lawyer, I put down everything that happened that I thought was material at the time.

That was why I made these memoranda. I was a lawyer,
191 and I knew that my memory might fail and it was best to have a memorandum of what I considered material. So I made a memorandum of all that happened that I thought was material to my case.

Q. You went there for the purpose of starting these lawsuits from time to time?

A. I went there for the purpose of getting a mileage book.

Q. Or starting a lawsuit; that is so, is it not?

A. Well, if the mileage book was not given to me that I wanted. I intended to start a lawsuit every time if they did not give me a mileage book such as I demanded. That is true every time I went there; that is why I made these memoranda. And so I put down on these memoranda everything that occurred that I thought was material to my side of the case.

In action number 4, my memoranda made at that time, just as it is there, is,—"Made demand for book at 10 o'clock and 25 minutes, a. m. Eugene McCarthy, agent. Presented contract or application; marked objectionable paragraphs. He said they would have to send away for book. Said did not keep books." Well, there is a stunner.

Q. "Would claim" is it not?

A. No.

Q. Well, you may read that word blank, and we will fill it in.

A. "Subject to regulations and mileage book, I asked to see mileage book so could tell what these regulations was. He gave me back money and went to the telegraph instrument to work." I cannot tell what that one word is, I may after considering a while."

192 On number 5, my memorandum is: "8 o'clock and 45 minutes a. m., demand of McCarthy in office; copy of this; two $10.00 bills, one United States note" another word I cannot make out, March 3.

Q. Act of March 3?

A. Yes, sir; "act of March 3, 1862, series of 80, one United States Treasury note; both legal tender. Said they were all tendering gold for the books now. This is not gold."

All of my memorandum on number six is,—"$10.00, series of 1880 A. 11926800; ten dollars series of 1880 A 16668704; Eugene McCarthy in office 8.45 a. m.; handed him application of which above is copy, and two ten-dollar legal-tender greenbacks above numbers. Shoved through ticket slot in glass door. He said leave the application and get out and I will file it. I said, I came up to see if I could get mileage book. I want one; he held up application which I had just handed to him, and said, 'This is your mileage book.'"

My entire memorandum on number seven is:—"Gene McCarthy 3.50 p. m. in ticket office. Handed him copy of above paper. Shoved money through window. Two ten-dollar bills, greenbacks A 11926800 series of 1880: A 16668704, series of 80, McCarthy said they must have coin. I stated that these were legal tender, and as such I tendered him the $20.00 for mileage book. He handed me one of their

blank applications. I called his attention to the clauses which were objectionable. He said they had no books on sale."

Q. Now, I observe in reading the numbers of the bills you made a mistake on the number six; just look, compare those two
193 numbers and see if the numbers of those two bills are not identical, showing that you made the tenders in number six and number seven with the identical money?

A. Yes, sir; they are.

That did happen at least once.

My entire memorandum on number 8 is,—"3 o'clock and 45 minutes p. m. Handed copy of above to Eugene McCarthy, ticket agent, Wellsville, New York, asking for mileage book. McCarthy took the money presented at the same time and said he would keep it this time, $20.00. I said to him, 'I want the mileage book required by the law.' He presented printed application. I said to him that I objected to some of the provisions of contract; he took contract back; handed me back money; stamped copy above. Five-dollars United States notes, number A 3134982; five-dollar United States note number A 32311942; five-dollar legal tender number B 3959183. Five-dollar legal tender B 3548264. The first two were legal tender series of 1880 and the next two were Treasury notes series of 1891."

My entire memorandum on number 9 is:—"McCarthy, ticket agent, 9.35 a. m.; called for mileage book, and offered and presented $20.00; four five-dollar Treasury notes, two greenbacks. Took copy of above notice and said will have mileage book September 1st. Take your things and get off. C. S. Hall present. Going to Hornellsville fair."

My entire memorandum on number 10 is:—"Eugene McCarthy in ticket office. $20.00; four five-dollar bills. Legal tender, shoved money through slot, and handed him copy of above and said, I wanted mileage book; I do not think we have got what you
194 want, but handed me contract same as before. I looked it over and there were some provisions in conflict with law. I handed it back; he then handed me back the money. I said: 'Then I understand you have not got books?' Three Treasury notes, $5.00 each. One greenback $5.00. Riley of Buckville and Will C. Frederick present."

Q. As you tendered five-dollar bills the numbers which are given on number 8 memorandum, and the number of which are not given in number nine and number ten, although they state that you tendered four five-dollar bills, wouldn't it be your best recollection that the same four $5.00 bills were tendered in number nine and number ten that were tendered in number eight?

A. I do not think they were. Notwithstanding the fact, I found that I tendered the same ten-dollar bills in two different cases on previous occasions. There was no reason why I was afraid to tender the same money again. I do not know of any reason why I should get different money except I was changing it around.

My memorandum on number 11 is:—"6 o'clock, 50 minutes, p. m. He took my application; it was $20.00; two Treasury notes, $10.00 each, McCarthy handed me mileage book and said if it was satisfac-

tory he would make it out. I asked him if the contract attached must be signed, and he said 'Yes.' I told him the contract was not what was required, and that the conditions of the contract did not bring book within the terms of the law."

My memorandum on number 12 is:—"November 2, made application, Gene McCarthy, 1.10 p. m. $20.00. Shoved through slot.

195 Five-dollar United States notes; A 31337560; A 19497276; A 30414542; A 23235801; offered me mileage book with contract which I refused to sign. He then handed me back money."

All of my memorandum in action number "A," justice's court, is, "Stated I wanted mileage book, complying with chapter 835, Laws of 1896; offered $20.00 at 10.25 a. m., legal tender; four five-dollar bills; Eugene McCarthy, agent in office; handed me book open at contract." "And handed me pen and said sign that. I said that was not what the law required."

My memorandum in action "B" is: "Made demand at 1.25 p. m., tendered $20.00; four United States notes; fifteen dollars and five silver dollars. Stranger apparently selling tickets. Said to him, wanted mileage book, repeating above application, and Allen, station agent, was in office. He brought out book with contract." I think that is meant: "I asked—said I would have to sign contract. I said I do not feel like signing that contract. Higbee Dukes present; Harry Lake and others. He shoved me back the money."

All of my original memorandum in action number 14 is: "July 28th, made demand, McCarthy. Read above, 10.40 a. m. Read above notice. Gave one to him; offered two United States notes; ten dollars each. He presented me book. I declined to sign contract which he said it was necessary to sign. Some changes from former. Gave me back other money; four five-dollar bills. McCarthy. Read chapter 484, Laws of 1897, which I had with me."

I have read the entire memoranda now.

196 Q. The words "some changes from former" have reference to the book that was tendered to you which had changes in it from the former book, do they?

A. Well, I do not think there were any changes.

Q. I will ask you if the words "some changes from former" have reference to the book that they offered you?

A. Well that was intended for it; at the time of it, yes, sir; on his statement. They follow the words: "He presented me book; I declined to sign contract which he said it was necessary to sign. Some changes from former." He stated to me that there were some changes in the contract. I do not think that was the time he showed me the blue book; however it may be. I think he did show me the blue book at that time; that would be my best recollection. I think I did not read the blue book that he showed me; that is, I do not think I read it clear through. I simply took his statement for it, that this blue book that he showed me was different from the other book, there were some changes in it. I subsequently read it clear though; one of the same kind. It was different from "Q" in that it had stamped on the face of it with rubber stamp some words, otherwise I do not think it was different; that is the substance of it

was not, anyway. It had stamped across the face of it directions that slightly affected the conditions on the inside. I think the words were "Good for any member of the family or firm;" I think nothing else. I do not remember anything else; that is on the last one; it was not then, anyway. I never compared it with "Q" to see whether they were the same. I read "Q" over a number of
197 times. I know we cannot tell whether papers are identical without comparing them. Not having compared it, I could not say whether it was the same as "Q" or not, in detail; but the general substance of it was the same. That is my opinion as a lawyer.

My entire memoranda on number 15 is—"July 31; demand 4.05 p. m.; McCarthy, ticket agent office. Four five-dollar bills, legal tender, mileage book; offered me book without signing by me if I wanted." That is all there is on that.

My memoranda on number 16 is—"Made demand at 4 o'clock and 49 minutes p. m.; McCarthy handed out book. I said to him 'This is not such a book as required by statute.' He said, 'Then I suppose you want back your money?' I said, 'If you — not got such book as required,' and asked him if that was all the kind he had."

My entire memoranda on number 17 is—"3.55 p. m. C. H. Allen, ticket agent, in office; asked for such mileage as required to be issued by chapter 1027, Laws 1895; as amended; handed him $20.00 Treasury notes and United States notes. He handed me back mileage book with contract to be signed; I asked him if I would have to sign contract, he said I would. He said that was all the book they had. Same book as before, same contract."

All of my memorandum on number 18 is—"5.30 p. m. Offered $20.00. McCarthy in office. Handed me book; stated it was what I wanted. I started to read; he said he guessed he would not let me read and took it back out of my hand. The money lay inside of ticket slot. McCarthy said the book is good for ride on ticket at any time and good for stop-over; he then asked me if I wanted
198 it. I stated to him that I wanted a book to conform to the statute. I then asked him if he was going to issue me such book as required. He said, 'Wait until the train goes; we will then talk the matter over.' The money was where he could take it. He offered me book same as before, besides the one he claimed conformed to statute, the one claimed to conform to statute was not the same as one before apparently, but contained a lot of printed matter and something stamped over it. Before taking back the money I stated to him that if he had a book to conform to the statute I wanted it. He did not offer me any book. Asked me if I wanted it made out. I again stated that if it conformed to the statute I wanted it." That is the entire memoranda there. In this memorandum I said that he offered me two books; I say "one claimed to conform to statute was not same as one before apparently, but contained a lot of printed matter and something stamped on it."

Q. That was the way that it appeared at that time?

A. No, it did not——

Q. Is not that the way that it appeared at that time?

A. It did not appear to me because I only read——

Q. That is what you say?

A. That is what I say there; yes. I did not write down entirely the way it looked to me, I took his word for it.

Q. Well, above her, you say "I took them to read."

A. I took them to read; yes, sir. After I had read some, he took it away from me; so far as I had read, it was the same as the other.

199 Q. Then having read some part of it he taking it away from you, you write down "the one claimed to conform to statute was not same as one before, apparently"?

A. I have his word for it. "It contained a lot of printed matter and something stamped on it;" I wrote that down there. There is not anything there showing I took his word for it, or showing he gave his word about it. I subsequently, however, found it was the same. I never compared it. As a lawyer, I can swear the substance of it was the same.

Q. You cannot swear as a lawyer the substance of it was the same if you cannot swear it was the same, can you?

A. Yes, sir. I want to swear that without comparing anything, without knowing how it compares, I can swear the substance is the same. My entire memoranda on number 19 is:

"1.35 a. 1.47 p. m."—that means from 1.35 to 1.47 "—made application for mileage book; tendered $20.00; two ten dollars; one Treasury note, one United States note. Eugene McCarthy in office. Allen also present. I said I wanted mileage book to conform to statute. I was handed book by McCarthy same as before. I said what I want is book to conform to statute. Talked 12 minutes and he at the end handed me back the money. During the time he had called me into the ticket office to show me his instructions under date of May 22, 1897, relative to issuing tickets to members of families or firms on New York State mileage book coupons. He said this was all the instructions he had. George H. Blackman present."

I have read to you my memoranda in each case, and all the
200 memoranda I have in each case, from which I have testified. From the memoranda I have read I gave the testimony I did yesterday in answer to my counsel.

Q. Are you able to testify positively to anything not appearing in that memoranda?

A. Yes, sir. I do not think I told my counsel yesterday that I could not testify positively to anything not appearing in my memoranda, as a reason why I should be allowed to testify from my memoranda. I do not know what his question was in that regard.

Q. You did not have any conversation at any time with any of these gentlemen in the ticket office of the defendant about the lines of the Erie Railway Company outside of the State of New York, did you?

A. I do not recall anything now, might have been.

Q. Did you at any time change your demand or your notice to them for a mileage book, your written one?

The COURT: The notices show: they do not claim anything except on the written notices.

Mr. MOOT: That is correct, is it?

Mr. FARNUM: Yes, we claim on the written notices accompanied by the demand.

WITNESS: I do not claim that I made any other or different demand for a book, at any time, than the written one, except as it appears in the testimony. I claim that the demand was made just as given and stated in the written demand, by me. In speaking about my family I said nothing about a wife; I am not a married man.

Q. Is that perfectly clear, or has that been a subject of dispute between you and a woman?

201 A. I never was married and never lived with any woman as a wife, there has never been any dispute on the subject, whatever. No woman has ever claimed that she married me; there never has been any such claim made that I ever heard of. There may have been, and I not heard of it, of course. When I was police justice at Richburg, I imposed fines from time to time. I have not assigned the causes of action, or any or them, here in this case, to anybody.

Mr. MOOT: As a part of this cross-examination connected with the Erie lines, part of this map, to make the description of the lines of the defendant more certain, I want to put in evidence and it is in Liber 164 of Deeds, page 60 and page 73, the first being a deed from Arthur H. Masten, special master, &c., and Charles H. Castor, of the old New York, Lake Erie & Western lines, on a foreclosure, and the second being a deed from Charles Castor and others to whom that deed was make, to the defendant Erie Railway Company of the same lines. These deeds delivered and recorded in November, 1895. These deeds show the defendant The Erie Railroad Company owns and operates a continuous line or lines of railway from Jersey City in the State of New Jersey through the States of New Jersey, Pennsylvania, New York, Ohio, Indiana and Illinois, to Chicago as also appears from the map in evidence in this case.

Redirect examination by Mr. FARNUM:

There was other conversation had between Mr. McCarthy or the other ticket agents and me, at the times that I made these
202 memoranda, that I did not put on my memoranda. I put on such as I deemed important.

Q. Now, you mentioned there that this last ticket that was shown you was similar to one before, what do you mean by that?

A. The contract in the back part of it. I read that to some extent.

Q. Now, you said that you could tell the substance or the certain portions of a contract, of, I think that was number 18, you say that you knew what they were, how did you know that? You stated that they contained certain objectionable features. Counsel asked you how you knew that if you did not read it through.

A. I read it through at the time this demand was made, when 19,

I think, the last one or next to the last one, whatever it was, when he called on me on the inside. That 19 had the same appearance as 18 which was shown me before. Up to the time the 11th action was commenced, the ticket agent did not at any time offer me a mileage book when I made my demand.

JOSEPH DEMMER, sworn for the plaintiff, testified as follows:

Direct examination by Mr. FARNUM:

I live in Belmont. I am the ticket agent and station agent of The Erie Railroad Company, this defendant, and have been such ever since 1860. I have been the station agent of the predecessor of the present Erie since 1860, and I have been the agent here ever
203 since 1860. I have sold passage tickets for the defendant company during that time; have recently and do now. The distance from Belmont to Wellsville as given me by the railroad company is eight and a fraction, I cannot remember just exactly; call it nine. I have sold tickets ever since the Erie Company as such was organized up to the present time, and sold from Belmont to Wellsville.

Q. What is the rate of fare charged for the regular ticket?

Mr. MOOT: I object to that. I do not quite see the purpose of this.

Mr. FARNUM: The point is this, the statute is that railroads which charge a maximum fare of more than two cents and are not entitled to receive to exceed three cents a mile are within the mileage book act, and I want to show by this officer that they do charge more than two cents a mile.

The COURT: Yes, you may prove that. I suppose that will be conceded.

Mr. MOOT: I concede that we charge more than two cents a mile between here and Wellsville.

The COURT: It is conceded that this company charges for passage on its road more than two cents per mile for each passenger.

Mr. MOOT: Not quite so broad as that; but I will concede that the defendant has charged and does charge more than two cents a mile within the State of New York, for passengers to whom it sells tickets; some of the passengers to whom it sells tickets.

204 Mr. FARNUM: I do not care about outside of the State.

The COURT: Are you satisfied with defendant's admission?

Mr. FARNUM: I want to show that the ordinary ticket that is kept on sale by the defendant company for sale at points within this State is more than two cents a mile.

The COURT: You may show it.

Mr. FARNUM: Do you concede that, Mr. Moot?

Mr. MOOT: I will not concede that, because it does not happen to be the fact. It depends on the locality; in some places we charge three cents a mile and in some places only two or less than two; it depends on the competition and locality.

Q. You say the distance is eight miles and a fraction from Bel-

mont to Wellsville; what is the regular rate of fare charged by your company for the sale of its regular tickets?

A. Twenty-five cents; what we would call our regular tickets. The distance from Belmont to Andover is seventeen miles. The rate of fare charged upon our regular ticket that we sell from Belmont to Andover is fifty cents. The distance from Belmont to Hornellsville is thirty-five miles. The regular rate of fare that we charge upon our tickets from Belmont to Hornellsville is $1.05. The distance from Belmont to Olean is twenty-five miles, I think; and our rate of fare charged by the railroad company for our regular ticket that we sell is ninety cents. As to the distance to Salamanca, now
205 you are coming as far as that, I do not sell that every day; I think forty-seven miles, I am not certain. I could state if I had one of our time-cards or time-tables.

(Witness shown paper.)

Belmont 366; Salamanca 414; that would be forty-eight miles from Belmont to Salamanca; the rate charged for the passage from Belmont to Salamanca is $1.50. The distance from Belmont to Dunkirk is ninety-three miles; the rate of fare regularly charged by our railroad company for that distance is $2.85. The distance from Belmont to Elmira is ninety-three or ninety-four miles; the rate of fare charged for that is $2.50. In each one of these cases I have mentioned the rate of fare exceeds two cents a mile, I should think. Those rates which I have charged are the rates which I am instructed to charge.

(Witness shown ticket.)

I think this ticket which you show me marked Exhibit D 1, for identification, is one of the regular form of tickets which is used by the defendant company for sale on the line of this road, it looks like it.

Q. And do you use a ticket similar to that for this local fare where tickets are bought from Belmont to the points that you have named in your testimony?

A. I use that kind of ticket and also a ticket from the book. One of this kind of ticket to every station. We have a book, the tickets are in blank, they are a little different. We write in the name of the station. But the rate of fare is the same with that as with this.

206 A. L. PURDY, recalled for the plaintiff, testified as follows:

Direct examination by Mr. FARNUM:

I received this certificate of service shortly after the day it bears date. It was in the condition then it is now. The figures which you show me in it were then as now, at 11.15 a. m.

Mr. FARNUM: I offer the certificate in evidence.

Mr. MOOT: I object. This is an *ex parte* affidavit. I have no chance to cross-examine upon it.

Objection sustained and exception taken.

THOMAS B. HOLMES, sworn for the plaintiff, testified as follows:

Direct examination by Mr. FARNUM:

I am a conductor in the employ of the defendant, The Erie Railroad Company; I have been a conductor upon this railroad thirty-one years. I have been in the employ of the defendant nearly ever since its organization.

(Witness shown ticket.)

The writing in pencil on the back of this ticket marked Exhibit "D 1," for identification, is my handwriting.

Q. What does it read?

Mr. MOOT: Wait a moment, I object.

The COURT: How is it important?

207 Mr. FARNUM: I desire to show the course of dealing and the practice in the use of these tickets in giving stop-over tickets, etc.

The COURT: I have already ruled on that question. I must be consistent, of course. I will give you the exception.

Mr. FARNUM: Exception, please.

Q. I would ask you, Mr. Holmes, so that we may bring the question up, if your instructions require you and your practice would from June, 1896, down to August, 1897, require you to sign such a ticket as that at any time it was presented.

Mr. MOOT: I object to that as outside of the issues.

Sustained and exception taken.

The plaintiff here rested.

Mr. MOOT: I move for a nonsuit in each action separately:

First. Upon the ground that the cause of action alleged in each action has not been proved.

Second. Upon the ground that no cause of action has been proved in either of the actions consolidated in the action on trial.

Third. Upon the ground that the plaintiff only demanded a book good on the entire line or lines of defendant's railway in all the States, and, therefore, the defendant rightfully refused his

208 demands, as defendant was under no obligation to obey the law of New York outside the State of New York. The defendant could only be made liable for a penalty by demanding of it a mileage book good on the line or lines of the defendant's railway in the State of New York, and plaintiff never made such a demand, although a demand for such a book good on the line or lines of defendant's railway in the State of New York is a necessary condition precedent to the maintenance of this action for a penalty.

Fourth. The undisputed evidence shows that the defendant is lawfully engaged in operating a railway line or lines in the States of New Jersey, Pennsylvania, New York, Ohio, Indiana and Illinois, running from Jersey City to Chicago, and there is no evidence to show that the defendant is authorized by law to charge a maximum fare of more than two cents a mile and not more than three cents a

mile, and does charge and did charge a maximum fare of more than two cents a mile, but there is an entire absence of evidence as to the maximum or minimum charges of the defendant in all States outside of New York State, and so far as the State of New York is concerned the undisputed evidence shows a maximum *charge of more* than three cents a mile, and there is no evidence to show that this was not a lawful charge on the part of the defendant, and no evidence to show that the legislation under which the plaintiff seeks to recover penalties herein was intended to or does apply to the line or lines of the defendant.

Fifth. Upon the ground that if the legislation under which
209 the defendant seeks to recover penalties herein was intended to apply to the railway line or lines of defendant and its operation of its railway line or lines, then such legislation of the State of New York and acts of the legislature of the State of New York are void, because they undertake to interfere with or regulate commerce among the several States, contrary to the Constitution of the United States and the acts of Congress in such case made and provided.

The COURT: I am inclined to hold in this case that the regulation of the company, or the rule requiring the holder or purchaser to sign this book was a reasonable one which they might impose and insist upon, and that leads to a granting of this motion for a nonsuit as to the last eleven cases. As to the first ten cases I deny the motion for a new trial.

Mr. FARNUM: We except to the decision or the ruling of the court as to the actions following the first ten.

Mr. MOOT: And we except as to the denial as to the first ten. I will request the court to direct a verdict in favor of the defendant as to the first ten cases. As to the first ten cases I ask to go to the jury and ask a finding from them that the plaintiff only made one *bona fide* application for a ticket as a passenger, on the ground that his own testimony shows that he had no use for more than one; that he went there for the purpose of bringing actions and recovering penalties; that the statute was drawn and intended to reach *bona fide* passengers only, and was not drawn or intended to reach or benefit mere informers seeking to recover penalties of the defendant.

210 The COURT: The court rules that the defendant may go to the jury upon the question of the veracity of the plaintiff, who has testified in his own behalf, but holds that if the jury shall believe what the plaintiff has testified to that he is entitled to recover the ten penalties, or a penalty in each of the first ten cases on trial.

Mr. MOOT: To which ruling I except. And I understand each ruling and exception to apply to each case separately.

The COURT: Certainly.

Mr. MOOT: Now, I request a verdict in favor of the defendant in the first ten cases.

Mr. FARNUM: Inasmuch as the defendant has requested a direction of a verdict for the defendant in the first ten cases, in behalf of the defendant, I ask the court to direct a verdict in favor of the plaintiff for the ten penalties in the first ten cases.

The COURT: Gentlemen, you will render a verdict in favor of the plaintiff for $500.00.

Mr. MOOT: Your honor notes us an exception to that.

The jury thereupon rendered a verdict for plaintiff for ten penalties of $50 each in the first ten cases, and the court directed that an order be entered that all exceptions of each party be heard in the appellate division in the first instance, all proceedings to be stayed meantime.

211 And because the foregoing proceedings, testimony, exhibits and exceptions do not appear of record, the parties hereto have caused this case and exceptions to be made, settled, signed, and filed, to the end that either party may duly notice and bring to a hearing a motion for a new trial upon the exceptions so disclosed herein.

The foregoing case settled this 2nd day of May, 1898, and ordered filed in Allegany county clerk's office.

HENRY A. CHILDS,
Justice Supreme Court.

At a term of the supreme court, held at the court-house in the village of Belmont, in and for the county of Allegany, on the 5th day of January, 1898.

Present: Hon. Henry A. Childs, justice presiding.

Supreme Court, Allegany County.

ALBERT L. PURDY
vs.
ERIE RAILROAD COMPANY.

This cause having been regularly placed upon the calendar for trial, at this term of court, and having been reached and moved in its order, the following jury was taken to hear and try the same.

212 *Jurors.*

Milo Shaw,
A. B. Pitt,
James Kane,
Ira Kemp,
John A. Carpenter,
Alonzo Crandall,
Oscar M. Vorhis,
J. N. Slade,
Charles Voss,
Aziza Moses,
S. S. Scott,
Jerome Cole.

Witnesses for Plaintiff.

Albert L. Purdy,
Thomas B. Holmes.
Joseph Demmer,

Plaintiff rests.

Motion by defendant for a nonsuit denied as to first ten causes; granted as to the other 11 causes.

Motion by defendant for a direction of a verdict for the first ten causes in favor of defendant.

Defendant may go to jury on certain matters.

Motion by plaintiff for a direction of a verdict in his favor on the first ten causes granted; verdict for plaintiff for $500.00.

Court directs exceptions to be heard in the first instance at the appellate divisions. All proceedings to be stayed the meantime.

Each party given 60 days to make case and exceptions after getting stenographer's minutes.

STATE OF NEW YORK, } ss:
Allegany Co. Clerk's Office, }

I, Geo. A. Green, clerk of the county of Allegany, and also clerk of the county and supreme courts for the said county, the
213 same being courts of record, having a common seal, do hereby certify that I have compared the foregoing copy, minutes of trial in Purdy *vs.* Erie Railroad Company, with the original thereof on file and record in this office, and that it is a correct transcript therefrom, and of the whole of such original.

Witness my hand and the seal of said county, this 28th day of April, 1898.

THOS. S. TEFFT,
Deputy Clerk.

SIR: Please take notice of an order in the within-entitled action, of which the annexed is a copy, this day entered in the office of the clerk of the county of Allegany.

Dated, Buffalo, N. Y., January 11th, 1898.

Yours, etc.,

SPRAGUE, MOOT, SPRAGUE & BROWNELL,
Attorneys for Defendant, No. 45 Erie County Savings Bank Building, Buffalo, N. Y.

To A. L. Purdy, attorney for plaintiff.

214 At a circuit of the supreme court held at the court-house in Belmont, Allegany county, N. Y., Jan'y 5th, 1898.

Present: Hon. Henry A. Childs, justice presiding.

ALBERT L. PURDY *ag'st* ERIE RAILROAD COMPANY. } Consolidated Action.

The court having granted a nonsuit in the last eleven cases consolidated herein, and the plaintiff having excepted to such ruling of the court, and the court having directed a verdict for the plaintiff as to the first ten cases consolidated herein, and the defendant having excepted to such ruling of the court, and the jury having rendered a verdict for the plaintiff as directed by the court, to which the defendant excepted, the court did thereupon, with the consent of counsel for both parties, direct that the said exceptions, and all others taken upon the trial, be heard at the appellate division for this department in the first instance, and that all proceedings herein by each party be stayed until the appellate division shall have heard

and decided motions for a new trial based upon such exceptions and a case and exceptions to be duly made and settled. Either party shall have sixty days in which to make a case and exceptions as proposed, after receiving the stenographer's minutes.

215 At a special term of the supreme court held at the city and county hall, in the city of Buffalo, in and for the eighth judicial district of the State of New York, on the 6th day of December, 1897.

Present: Hon. John Woodward, justice, presiding.

Supreme Court, Allegany County.

ALBERT L. PURDY *against* ERIE RAILROAD COMPANY. } Consolidated Action.

On reading and filing the notice of motion, affidavit of A. L. Purdy, and the proposed complaints Nos. 11, 12, A, B, and 13 to 19 both inclusive as desired to be amended, the original complaints, the said orders of consolidation and stipulations made and entered as mentioned in said affidavit; the affidavit of Adelbert Moot, the complaint in actions Nos. 2 and 14, the answers in actions Nos. 2 and 1, order — consolidation in actions 1 to 12 A, B, No. 13 and stip., and order 14 to 19 and copy clerk's and stenographer's minutes, and after hearing Caleb G. Hall, of counsel for the plaintiff, and Adelbert Moot, of counsel for the defendant, ordered that plaintiff have leave to amend his complaint in actions designated as Nos. 11, 12, A, B, and 13 to 19 inclusive, so that the complaint in each shall be read and stand as served with this notice of motion upon the plaintiff paying one bill of costs including disbursements, trial and witness' fees for the October trial term of this court, held at Belmont, Allegany county, N. Y., October 11th, 1897, fixed at $55.75. And it is further ordered that said costs be paid within ten days
216 and that in default of such payment this motion of the plaintiff be denied with costs of this motion to defendant. It is further ordered in case the pleadings shall be amended as above provided, the defendant shall accept short notice of trial if need be, so that the cause may be tried at the next trial term of this court to be held in Allegany county, N. Y. It is further ordered on stipulation of the parties in open court that in case the plaintiff shall comply with this order that the proposed complaints in said actions Nos. 11, 12, A, B, and 13 to 19 inclusive, as served with this motion be accepted, received and regarded by the defendant as personally served on the day this order shall be complied with and from thence stand as the plaintiff's pleadings in said action numbered and designated as aforesaid.

Entered December 7th, 1897.

GEORGE A. GREEN, *Clerk.*

Supreme Court, Appellate Division, Fourth Department.

ALBERT L. PURDY, Plaintiff,
against
ERIE RAILROAD COMPANY, Defendant. } Consolidated Action.

SIR: Take notice that on the case and exceptions herein and upon all pleadings and proceedings in the above-entitled action, a motion will be made at a term of the appellate division of the supreme
217 court to be held at the court-house in the city of Rochester, commencing on the 7th day of June, 1898, at the opening of court on that day, or as soon thereafter as this case may be reached on the calendar of such court at that term, for a new trial of this action, on such exceptions and for such other and further relief as to the court may seem just and equitable.

Dated Buffalo, N. Y., May 23d, 1898.

MOOT, SPRAGUE, BROWNELL & MARCY,
Attorneys for Defendant.

Office and P. O. address, 45 Erie County Savings Bank bldg., Buffalo, N. Y.

To Albert L. Purdy, Esq., attorney in person for plaintiff.

Supreme Court, Allegany County.

ALBERT L. PURDY
against
ERIE RAILROAD COMPANY. } Consolidated Action.

STATE OF NEW YORK,
County of Erie, City of Buffalo, } ss:

Edward C. Hard, being duly sworn, deposes and says that he is managing clerk for Moot, Sprague, Brownell & Marcy, attorneys for defendant and appellant in the above-entitled action. That
218 no opinion or decision was given by the judge on the trial of this action, as deponent is informed and verily believes.

EDWARD C. HARD.

Sworn to before me, this 11th day of May, 1898.

HERBERT A. TAYLOR,
Commissioner of Deeds in and for the City of Buffalo, N. Y.

It is hereby stipulated that the foregoing copy of judgment-roll, case and exceptions, exhibits, orders and affidavits are correct and true transcripts and copies of and from the originals thereof, entered and on file in the office of the clerk of the county of Allegany, and that the same may be used upon the argument herein with the same force and effect as if certified by the clerk of said county.

Dated May 28th, 1898.

ALBERT L. PURDY,
Attorney in Person for Plaintiff and Respondent.
MOOT, SPRAGUE, BROWNELL & MARCY,
Attorneys for Defendant and Appellant.

Supreme Court, Allegany County.

ALBERT L. PURDY
against
ERIE RAILWAY COMPANY. } Actions 1–10.

STATE OF NEW YORK,
County of Erie, City of Buffalo, } ss.:

Edward C. Hand being duly sworn deposes and says that
219 he is managing clerk for Moot, Sprague, Brownell & Marcy, attorneys for defendant and appellant in the above-entitled action. That no opinion was written or given by the justices of the appellate division of the supreme court, fourth department, on the hearing of the appeal in this action before them, as deponent is informed and verily believes.

EDWARD C. HARD.

Sworn to before me this *this* 10th day of December, 1898.
EDWARD M. SICARD,
Commissioner of Deeds in and for the City of Buffalo, N. Y.

At a term of the appellate division of the supreme court of the State of New York, in and for the fourth judicial department, at the city of Rochester, on the 7th day of October, 1898.

Present: Hon. George A. Hardin, presiding justice; Hon. David L. Follett, Hon. William H. Adams, Hon. Manly C. Green, Hon. Hamilton Ward, associate justices.

ALBERT L. PURDY, Plaintiff,
against
ERIE RAILROAD COMPANY, Defendant.

The court having granted a nonsuit in eleven cases consolidated herein, and the plaintiff having excepted to such ruling, and
220 the court having directed a verdict for the plaintiff as to the first ten cases consolidated herein, and the defendant having excepted to such ruling of the court, and the jury having rendered a verdict for the plaintiff, as directed by the court, to which the defendant excepted, and the court having directed that the exceptions, and all the exceptions, taken upon the trial be heard at the appellate division in the first instance, and that all proceedings be stayed until such hearing by the appellate division, and motions for new trial based upon said exceptions, decided; and the exceptions having been heard on the 28th day of September, 1898, by the appellate division, fourth department, and due deliberation had thereon,

It is ordered and adjudged that the defendant's exceptions be and the same hereby are overruled, and motion denied, with costs, and judgment ordered for the plaintiff on the verdict, with costs.

All concur.

NEWELL C. FULTON, *Clerk.*

Supreme Court, Appellate Division, Fourth Judicial Department.

CLERK'S OFFICE, ROCHESTER, N. Y.

I, Newell C. Fulton, clerk of the appellate division of the supreme court in the fourth judicial department, do hereby certify that the annexed order is a true copy of the original, now on file in this office, and of the whole thereof.

In witness whereof, I have hereunto set my hand and affixed the seal of said court, at the city of Rochester, this 5th day of December, 1898.

[L. S.] NEWELL C. FULTON, *Clerk*.

221 Supreme Court, Allegany County.

ALBERT L. PURDY, Plaintiff,
against
ERIE RAILROAD COMPANY, Defendant. } Consolidated Action.

Twenty-one actions, having, by various order- entered in the Allegany county clerk's office been consolidated herein, and this action having been duly brought to trial at a trial term of this court, held at the court-house in Belmont, in and for the county of Allegany, on the 4th day of January, 1898, and a nonsuit granted in eleven of the said cases consolidated herein, and the court having directed a verdict for the plaintiff as to the first ten cases consolidated herein, and the defendant having excepted to such rulings, and the jury having found a verdict for the plaintiff for the sum of $500, as directed by the court, and the defendant having excepted thereto, and the court having directed that the exceptions taken upon the trial be heard at the appellate division in the first instance, and that all proceedings be stayed until such hearing, and the exceptions having been heard on the 28th day of September, 1898, by the appellate division, fourth department, and due deliberation had therein, and it having been ordered and adjudged by said court that defendant's exceptions be and the same were overruled and motion denied with costs and judgment ordered for plaintiff on verdict with costs, and the remittitur of the said appellate division duly certified by the clerk of said court having been duly filed with the original stipulated case on appeal or on said hearing constituting the judgment-roll herein, and the plaintiff's costs having been duly taxed,

222 as provided in the order consolidating such actions, entered on December 18, 1896, at the sum of $647.51,

On motion of A. L. Purdy, plaintiff's attorney, it is ordered, adjudged and decreed that the plaintiff, Albert L. Purdy, recover of the defendant Erie Railroad Company, the said sum of $500, said verdict, and the further sum of twenty-three dollars and fifty-eight cents ($23.58) the interest on said verdict from said 4th day of January, 1898, to this date, and said sum of ($647.51) six hundred forty-seven dollars and fifty-one cents, costs so taxed, making in all the sum of one thousand one hundred seventy-one dollars and nine cents ($1,171.09) and that plaintiff have execution therefor.

Judgment perfected this 17th day of October, 1898, at 2.30 p. m.

THOMAS G. TIFT,
Deputy Clerk.

Supreme Court, Allegany County.

ALBERT L. PURDY, Plaintiff,
against
ERIE RAILROAD COMPANY, Defendant.

SIRS: Please take notice that the defendant, Erie Railroad Company, appeals to the court of appeals from the judgment of the appellate division of the supreme court, fourth department, herein entered in the office of the clerk of the county of Allegany on the 17th day of October, 1898, overruling defendant's exceptions taken upon the trial of said action, and heard by the appellate division
223 in the first instance, directing a verdict in favor of the plaintiff for the sum of five hundred dollars ($500.00) and costs, and entered for the sum of $523.58 damages, and interest, and the sum of $537.51 costs as retaxed, and from the whole and every part of said judgment.

Dated November 4th, 1898.

Yours, etc.,

MOOT, SPRAGUE, BROWNELL & MARCY,
Attorneys for Defendant, No. 45 Erie County Savings Bank Building, Buffalo, N. Y.

To clerk of the county of Allegany and to A. L. Purdy, Esq., attorney for respondent:

It is hereby stipulated that the foregoing copy of judgment-roll, case and exceptions, exhibits, judgments, orders and affidavits, notices, etc., is a true and correct transcript of and from the originals thereof entered and on file in the office of the clerk of the county of Allegany, and that the same may be used upon the argument herein, with the same force and effect as if signed and certified by said clerk.

ALBERT L. PURDY,
Attorney in Person for Plaintiff and Respondent.
MOOT, SPRAGUE, BROWNELL & MARCY,
Attorneys for Defendant and Appellant.

(Here follows map marked p. 224.)

225 STATE OF NEW YORK, *ss:*

Court of Appeals.

Pleas in the court of appeals, held at the capitol, in the city of Albany, on the 27th day of February, in the year of our Lord one thousand nine hundred, before the judges of said court.

Witness the Hon. Alton B. Parker, chief judge, presiding.

W. H. SHANKLAND, *Clerk.*

MAP(S) IS/ARE TOO LARGE TO BE FILMED

Remittitur, February 27th, 1900.

ALBERT L. PURDY, Respondent,
ag'st
ERIE RAILROAD COMPANY, Appellant.

Be it remembered that on the 5th day of January, in the year of our Lord one thousand eight hundred and ninety-nine, Erie Railroad Company, the appellant in this action, came here into the court of appeals, by Moot, Sprague, Brownell & Marcy, its attorneys, and filed in the said court a notice of appeal and return thereto from the judgment of the appellate division of the supreme court in and for the fourth judicial department; and Albert L. Purdy, the respondent in said action, afterwards appeared in said court of appeals, by Albert L. Purdy, attorney in person.

Which said notice of appeal and the return thereto, filed as aforesaid, are hereunto annexed.

Whereupon the said court of appeals, having heard this cause argued by Mr. Adelbert Moot, of counsel for the appel-
226 & 227 lant, and by Mr. Clarence A. Farnum, of counsel for the respondent, and after due deliberation had thereon, did order and adjudge that the judgment of the supreme court appealed from in this action be in all things affirmed; and it was further ordered and adjudged that the respondent recover against the appellant costs of appeal in this court.

And it was also further ordered that the record aforesaid and the proceedings in this court be remitted to the said supreme court, there to be proceeded upon according to law; therefore it is considered that the said judgment be in all things affirmed, with costs, as aforesaid, and stand in full force, strength, and effect.

And hereupon as well *as* the notice of appeal and return thereto aforesaid as the judgment of the court of appeals aforesaid by them given in the premises are by the said court of appeals remitted into the supreme court of the State of New York, before the justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said supreme court, before the justices thereof, &c.

W. H. SHANKLAND,
Clerk of the Court of Appeals of the State of New York.

Court of appeals, clerk's office.

ALBANY, *February 27th,* 1900.

I hereby certify that the preceding record contains a correct transcript of the proceedings in said action in the court of appeals, with the papers originally filed therein attached thereto.

State of New York (Seal impressed on gold leaf)
Court of Appeals.

W. H. SHANKLAND, *Clerk.*

[Endorsed:] Court of appeals. Albert L. Purdy, resp't, against Erie Railroad Company, app'l't. Remittitur. A. L. Purdy, att'y for resp't, Wellsville, N. Y.

228 At a special term of the supreme court of the State of New York, held at the city and county hall, in the city of Buffalo, New York, in and for the county of Erie, on the 5th day of March, 1900.

Present: Honorable John S. Lambert, justice, presiding.

ALBERT L. PURDY
against
ERIE RAILROAD COMPANY.

The defendant, The Erie Railroad Company, having appealed to the court of appeals from the judgment of the appellate division of the supreme court of the fourth judicial department, entered in the office of the clerk of Allegany county, New York, October 17, 1896, overruling defendant's exceptions taken upon the trial of the issues in this action, and the said court of appeals having affirmed the judgment of this court, now, on reading and filing the remittitur from the court of appeals, bearing date February 27th 1900, and on motion of Albert L. Purdy, attorney for the plaintiff in person for the respondent, it is—

Ordered that the judgment of the court of appeals be, and the same hereby is, made the judgment of this court, with $134.69 costs, and that the respondent, Albert L. Purdy, have execution thereon against the defendant, The Erie Railroad Company.

Erie Special Term, Mar. 5th, 1900.

Granted and ordered entered in Allegany county clerk's office.

FRANK J. TITUS,
Sp. Dep. Clerk.

Entered March 6th, 1900.

GEO. A. GREEN, *Clerk.*

229 [Endorsed:] Supreme court. Albert L. Purdy *vs.* Erie Railroad Company. Order making judgment of court of appeals the judgment of this court. A. L. Purdy, pl'ff's att'y in person, Wellsville, N. Y. Allegany Co. clerk's office. Entered March 6, 1900. George A. Green, clerk.

230 Supreme Court, Allegany County.

ALBERT L. PURDY
against
ERIE RAILROAD COMPANY.

STATE OF NEW YORK,
Allegany County Clerk's Office, } *ss:*

I, George L. Green, clerk of said county, do hereby certify that I have compared the annexed copy of record of appeal to the court of

appeals, remittitur, and judgment, and of all proceedings had and entered in the above cause, and copy of endorsements thereon, with the originals thereof and *its* endorsements, entered and on file in this office, and find the same to be true transcripts of and from said originals and the whole of each thereof; that attached thereto are the writ of error, with allowance endorsed thereon; a copy of the citation, with acceptance of service endorsed thereon; a copy of the bond, and assignment of errors.

In witness whereof I have hereunto set my hand and affixed the seal of said county, in Belmont, this 19th day of June, A. D. 1900

[Seal Allegany County.]

Per THOS. S. TEFFT, *Dep. Clerk.*

[Ten-cent U. S. internal revenue stamp, canceled 6, 19, '00. T. S. T.]

231 [Endorsed:] County clerk's certificate.

232 UNITED STATES OF AMERICA:

Supreme Court.

ALBERT L. PURDY, Plaintiff,
against
ERIE RAILROAD COMPANY, Defendant. } At Law. Petition for Writ of Error.

To the Hon. Rufus W. Peckham, associate justice of the Supreme Court of the United States:

Comes now the defendant, Erie Railroad Company, and says that it is a corporation duly organized and existing in the State of New York under and by virtue of the laws of the State of New York; that said defendant was incorporated under the statutes of said State as the result of the sale of the property of a corporation known as the New York, Lake Erie and Western Railroad Company and the reorganization of said corporation, the New York, Lake Erie and Western Railroad Company, in accordance with the statutes of the State of New York in such case made and provided, as appears by the certificate of incorporation of said defendant offered in evidence by the plaintiff on the trial of this action and duly filed in the office of the secretary of state November 14th, 1895.

That October 17th, 1898, a judgment of the supreme court of the State of New York was entered in the clerk's office of the county of Allegany, in said State, against said Erie Railroad Company, defendant, and in favor of said Albert L. Purdy, plaintiff, adjudging that the defendant should pay to the plaintiff five hundred dollars ($500.00), being ten separate penalties of fifty dollars ($50.00) each, for violation of "An act in relation to the issue of mileage books by railroad corporations," constituting chapter 1027 of the Laws
233 of 1895, as amended by chapter 835 of the Laws of 1896 of the State of New York; that in addition thereto the defendant was required to pay the plaintiff $23.58 interest on said five hundred dollars ($500.00) from January 5th, 1898; that in addition thereto the defendant was required to pay the plaintiff six hundred

and forty-seven dollars and fifty-one cents ($647.51) costs, as taxed; that said judgment awarded the plaintiff execution against this defendant for eleven hundred and seventy-one dollars and nine cents ($1,171.09); that said judgment was entered upon the verdict of a jury, which verdict was directed in favor of the plaintiff and against the defendant by Mr. Justice Henry A. Childs, despite defendant's exception to such direction thereof, at a regular term of the supreme court held in Allegany county, January 5th, 1898.

That said defendant duly moved for a new trial at the appellate division of the supreme court of the State of New York upon its answers, claim that said statute was unconstitutional, and said exception with others, but October 7th, 1898, the exceptions of this defendant were overruled, such motion for a new trial was denied, and judgment was awarded the plaintiff upon such verdict, with costs; which judgment was thereafter duly entered, in form and manner aforesaid, October 17th, 1898.

That thereafter this defendant, in due and proper form, duly appealed from said judgment to the court of appeals of the State of New York; that upon such appeal the Erie Railroad Company insisted and claimed in substance, among other things, that chapter 1027 of the Laws of 1895, as amended by chapter 835 of the Laws of the State of New York for the year 1896, was unconstitutional and void within the provisions of the Constitution of the United States;

234 that February 27th, 1900, the court of appeals of the State of New York, being the highest court of law and equity in said State of New York, affirmed said judgment upon an opinion by Associate Judge Cullen; a true and full copy of which opinion is annexed hereto as a part hereof, that the grounds thereof may more fully appear, and that it may appear therefrom that this defendant, Erie Railroad Company, has been denied its rights under the Constitution of the United States; that on the 6th day of March, 1900, an order was duly entered in the clerk's office of the county of Allegany, in the State of New York, upon a remittitur of the court of appeals; by which order the remittitur of the court of appeals was made the judgment of the supreme court of the State of New York, thus affirming the previous judgment rendered in all things, with one hundred and thirty-four dollars and sixty-nine cents ($134.69) costs, as taxed, for which execution was awarded to said Albert L. Purdy against this defendant, said Erie Railroad Company.

That thereafter this defendant, said Erie Railroad Company, duly moved the court of appeals of the State of New York for a re-argument upon the ground, in substance, that said judgment and remittitur of the court of appeals was erroneous, in that it denied this defendant its rights under the Constitution of the United States, but that said motion was denied, without an opinion, May 1st, 1900; but no further order or judgment was necessary or was entered upon such decision, because by previous decisions the judgment of the supreme court of the State of New York had become the judgment of the court of appeals of the State of New York as against this defendant.

That this defendant, Erie Railroad Company, was and is aggrieved, in that in said judgment and proceedings had prior thereunto in this cause several errors were committed, to the prejudice of this defendant, all of which will appear in detail in the assignment of errors filed with this petition.

235 This defendant further says that the plaintiff, Albert L. Purdy, is an attorney-at-law and is now a resident of Wellsville, Allegany county, N. Y., and that this defendant is a domestic corporation of the State of New York, as aforesaid, and is now a resident of the city of New York and State of New York, having its principal place of business in the city of New York, in said State; that the business of this defendant is carrying passengers and freight for hire, and doing other business incident thereto, in the States of New York, New Jersey, Pennsylvania, Ohio, Indiana, and Illinois, within which States it operates its lines of railroad; that the plaintiff commenced bringing actions against this defendant June 29th, 1896, and continued to bring actions against this defendant from time to time until August 31st, 1897; that in all the plaintiff brought twenty-one (21) different actions against this defendant between the 29th day of June, 1896, and the 31st day of August, 1897; that nineteen (19) of said actions were brought against this defendant in the supreme court, Allegany county, and two (2) of said actions were brought against this defendant in justice's court in the town of Wellsville, Allegany county, State of New York; that each of said actions was brought against this defendant to recover a penalty of fifty dollars ($50.00) on the claim that this defendant had violated "said statute, section 1 of chapter 1027 of the Laws of 1895, as amended by section 1 of chapter 835 of the Laws of 1896;" that the alleged violation in substance claimed in each case was that this defendant had refused to issue to the plaintiff a proper mileage book, at a reduced rate of fare, pursuant to the provision of said statute as amended, as aforesaid.

That in its answer in each of said actions said Erie Railroad Company did claim that said amended statute was "unconstitu-
236 tional and void because it is in violation of the provisions of the Constitution of the United States, which commits to Congress the sole power to regulate commerce between the several States, and that it is unconstitutional and void because it is in violation of various other provisions of the Constitution of the United States."

That all of said actions were duly consolidated into one action by orders of the supreme court duly made without prejudice to the rights of either party, in accordance with the law and practice of the State of New York in such case made and provided.

That this defendant continued to make such claim with reference to such statute as amended at the trial and at the appellate division of the supreme court and in the court of appeals of the State of New York; that this defendant, said Erie Railroad Company, did claim in particular the protection of the provisions of section 1 of article XIV of the Constitution of the United States, but that each of the courts of the State of New York, from the lowest to the highest, de-

nied to this defendant its constitutional rights so claimed in its behalf in each of said courts.

That by virtue of the judgment of the State of New York a statute of the State of New York that violates the Constitution of the United States is being enforced against this defendant, and its rights under the Constitution of the United States are being denied to this defendant, said Erie Railroad Company.

Wherefore defendant prays that a writ of error may issue to the supreme court of the State of New York or to the proper court
237 for the correction of the errors complained of, and that a duly authenticated transcript of the record, proceedings, and papers herein may be sent to the said Supreme Court of the United States.

ERIE RAILROAD COMPANY,
By ADELBERT MOOT, *Its Attorney.*

STATE OF NEW YORK, }
County of Erie, City of Buffalo, } ss.:

Adelbert Moot, being duly sworn, says that he has read the foregoing petition and knows the contents thereof, and the same is true to the knowledge of deponent except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

Deponent further says that all of the matters stated in said petition are within the personal knowledge of deponent.

ADELBERT MOOT.

Sworn to before me this 30 day of May, 1900.

[Seal of J. S. McDonnell, Notary Public, Erie County, N. Y.]

J. S. McDONNELL,
Notary Public in and for Erie Co., New York.

238 ALBERT L. PURDY, Respondent, }
v.
ERIE RAILROAD COMPANY, Appellant. }

(Decided February 27, 1900.)

Appeal from a judgment of the appellate division, fourth department, overruling the defendant's exceptions and directing the entry of judgment in favor of the plaintiff upon the verdict of a jury directed by the court at trial term.

Adelbert Moot, for appellant.
Clarence A. Farnum, for respondent.

CULLEN, *J.:*

This action, similar in character to that of Beardsley *v.* N. Y., L. E. & W. R. R. Co., is brought to recover penalties for the refusal of the defendant to issue mileage books as prescribed by chapter 1027 of the Laws of 1895, as amended by chapter 835 of the Laws of 1896. The record in this case, however, differs materially from that

in the Beardsley case, both in its facts and in the objections taken by the counsel to the right of the plaintiff to recover. The complaints (there were originally several actions, which were subsequently consolidated into one) allege that the defendant was a railroad corporation organized under the laws of this State, and then set forth the various matters necessary to bring the defendant within the terms of the statute and the details of the plaintiff's applications for mileage books and the defendant's refusal to issue them. They do not state when the defendant was incorporated. The answers to the several causes of action admitted the incorporation of the defendant and certain other allegations of the plaintiff in reference to the mileage of road operated by the de-
239 fendant and its rates of fare, and put in issue the other averments of the complaint. They further set up that the defendant owned and operated a railroad extending through several States, and charged that the statute of 1896 "is unconstitutional and void because it is in violation of the provision of the Constitution of the United States which commits to Congress the sole power to regulate commerce between the several States, and that it is unconstitutional and void because it is in violation of various other provisions of the Constitution of the United States and of the constitution of the State of New York." On the trial of the action the plaintiff put in evidence the certificate of the defendant's incorporation, of which the record contains only the following: "Certificate referred to shows that the Erie railroad corporation, defendant, was duly organized and incorporated November 14, 1895, under the general laws of the State of New York for the incorporation of railroads." The earliest refusal to issue a mileage book, for which it is sought to recover the penalty, occurred on June 26, 1896. The defendant put in evidence a map showing the various lines of the Erie railroad extending through this State and others and, "to make the description of the lines of the defendant more certain," as was stated by the counsel in offering them, two deeds—one from Arthur H. Masten, special master, to Charles Caster and others and the other from Caster and others to the defendant. All the record states of these deeds is that they were "of the New York, Lake Erie & Western lines," and that they were delivered and recorded in November, 1895. This is all that appears concerning the original title to defendant's road. There is nothing to show the defendant has succeeded to the rights or franchises of any company antedating the enactment of the statute of 1895. While our personal knowledge may inform us of the history of the railroad lines operated by the defendant, to that we cannot
240 appeal, and we can indulge in no presumption as to the existence of facts not appearing in the record. As the case stands before us, we have a railroad company created after the statute of 1895, and whose franchises and property rights must be assumed to have accrued subsequently to that time. The question, therefore, is whether the statute of 1895, though void as to existing railroad companies, is not constitutional and valid as to companies organized and acquiring property and franchises in the future.

That a statute which is unconstitutional, so far as it purports to operate retrospectively, may be upheld as to future cases is settled by authority (People *v.* O'Neil, 109 N. Y., 251; Cooley Const. Lim., 180). We do not assent, however, to the broad claim of the learned counsel for the respondent that a corporation cannot object to the constitutionality of any statute enacted by the State prior to the time of its organization. Whether the proposition contended for is true or false depends on the ground on which the invalidity of the statute is assailed or declared. If the State should require or enact that railroad companies thereafter organized must subject the management and conduct of any interstate transportation and business they may carry on to State control, such a statute would be void as in contravention of the Constitution of the United States, which commits to Congress the regulation of interstate commerce. It is probable that there are provisions of the State constitution, such as those regulating the administration of justice and ordained for the security of persons and property, which the legislature could not require even future corporations to waive as a condition of their charters; but the ground on which the Supreme Court of the United States in the case of Lake Shore, etc., *v.* Smith (173 U. S., 684) held the mileage-book act unconstitutional was that it was an invasion
241 of the property rights of the railroad company, in that it required the company to transport persons willing and able to purchase thousand-mile books at a less sum than the general or maximum rate allowed by law; in other words, that it compelled the company to surrender, as to such persons, the difference between the special rate of fare and the regular rate. This exaction was illegal, because it was without due process of law. We know of no reason, however, why a railroad company may not agree, upon sufficient consideration, to surrender or transfer any specific pecuniary right. The right to contract as to property is one of the inherent rights of a citizen of which he cannot be deprived, except as to that class of contracts which are condemned in the exercise of the police power, such as usury and the like (People *v.* Gillson, 109 N. Y., 389). The same liberty to contract exists in the grant of charters by the legislature. Therefore a regulation as to the price of transportation, which would be an illegal exaction when sought to be imposed on existing corporations solely by legislative fiat, may, in the case of future corporations, be the mere performance of the obligation of a contract. The authority to construct and operate a railroad is not the natural right of a citizen, but a franchise proceeding from the favor or grant of the State. As a condition of such grant the legislature might require the company to transport passengers at any prescribed rate of fare; equally, it may require that certain classes of passengers be transported at a particular rate of fare, or that any passenger, under certain circumstances and on compliance with certain requirements, be transported at such rate. In Railroad Co. *v.* Maryland (21 Wall., 456) the Supreme Court of the United States said: "This unlimited right of the State to charge, or to authorize others to charge, toll, freight, or fare for transportation on its
242 roads, canals, and railroads arises from the simple fact that they are its own works or constructed under its authority. It

gives them being. It has a right to exact compensation for their use." So it was held that a reservation by the State to itself of one-fifth of the receipts for transportation of passengers was valid, and it was said that the State might have exacted the whole receipts. (See also Ashley *v.* Ryan, 153 U. S., 436, and L. & N. R'y Co. *v.* Ky., 161 U. S., 167.)

The statute of 1896 was passed subsequently to the incorporation of the defendant, and if the statute increased the burden imposed on the defendant by the act of 1895, as to such additional burden it would be invalid, but a comparison of the two acts shows that all the modifications of the statute of 1895 effected by the statute of 1896 are favorable to the railroad company. By the first act the mileage books entitled the holder, *i. e.*—the bearer or assignee—to transportation; by the second the use of the book is limited to the purchaser and to certain members of his family and employees. By the act of 1895 there was imposed on the company the general duty to issue mileage books; by that of 1896 the company is required to keep such books for sale only at stations in incorporated villages and cities. By the earlier statute the company was practically required to accept the mileage books from passengers on the train in lieu of tickets. By the latter act the mileage book can be used only in the purchase at the ticket office of a ticket for the proposed journey. We are of opinion, therefore, that the enactment of 1896 is constitutional and valid in the same cases where the statute of 1895 would be upheld.

While we have discussed at some length the constitutionality of the statutes of 1895 and 1896 as applied to future corporations, we doubt very much whether the defendant's objections and exceptions are sufficient to raise the question. So far as the pleadings
243 are concerned the only attack on the validity of the statutes is that already quoted from the defendant's answer. At the opening of the trial the defendant moved to dismiss the complaint because it failed to state facts sufficient to constitute a cause of action for a penalty. No particular ground for the attack on the complaint is stated. At the close of the evidence the defendant renewed its motion to dismiss the complaint, but the sole ground on which it assailed the validity of the statute itself was that it constituted an interference with the regulation of interstate commerce, and hence was in violation of the Constitution of the United States. The objection that the statute was an invasion of the defendant's property rights and contravened for that reason either the Constitution of the United States or the constitution of this State does not anywhere appear in the record, and the rule seems settled that such an objection, to be available here, must have been raised in the courts below (Vose *v.* Cockroft, 44 N. Y., 415; Delaney *v.* Brett, 51 N. Y., 78).

The objection that the statutes of 1895 and 1896 are regulations of interstate commerce, and hence in conflict with the Federal Constitution, is satisfactorily dealt with in the very clear opinion of Mr. Justice Merwin, of the appellate division, delivered in the Beardsley case (15 App. Div., 251). That such a statute, if limited in its scope to transportation wholly within the limits of the State, is a valid

exercise of State authority is settled by the decision of the Supreme Court of the United States in Stone *v.* Farmers' Loan & Trust Co. (116 U. S., 307), where it was said: "It (the State) may, beyond all question, by the settled rule of decision in this court, regulate freights and fares for business done exclusively within the State." This doctrine has never been overruled or limited; on the contrary, it is fully recognized in the later cases (Hennington *v.* Georgia,
244 163 U. S., 299; W. U. Tel. Co. *v.* James, 162 U. S., 650; L. S. & M. S. R. Co. *v.* Ohio, 173 U. S., 285). In Wabash, etc., R'y Co. *v.* Illinois (118 U. S., 557) a statute of Illinois regulating fares was held void solely on the ground that the act, as interpreted by the supreme court of the State, included cases of transportation partly within and partly without the State. It was there stated: "If the Illinois statute could be construed to apply exclusively to contracts for a carriage which begins and ends within the State, disconnected from a continuous transportation through or into other States, there does not seem to be any difficulty in holding it to be valid." There is nothing in the language of the statutes now before us that shows they were intended to affect any but interstate transportation; but if their interpretation is doubtful "the courts must so construe a statute as to bring it within the constitutional limits, if it is susceptible of such construction" (Sage *v.* City of Brooklyn, 89 N. Y., 189; People *v.* Terry, 108 N. Y., 1). Within this principle these statutes must be construed as applying to transportation wholly within the State, and as so construed they do not infringe upon the Constitution of the United States.

The judgment appealed from should be affirmed with costs.

Parker, ch. J.; Gray, Bartlett, Vann, and Werner, JJ., concur; Martin, J., concurs in result.

Judgment affirmed.

A copy.

E. H. SMITH, *Reporter.*
C.

245 UNITED STATES OF AMERICA:

Supreme Court.

ALBERT L. PURDY, Defendant in Error,
against
ERIE RAILROAD COMPANY, Plaintiff in Error.

That said plaintiff in error, Erie Railroad Company, by Adelbert Moot, its attorney, now comes into the Supreme Court of the United States and for assignment of errors herein says:

That in the record and proceedings and in the judgment in said cause there is manifest error in this, to wit:

1. That the supreme court of the State of New York erred and violated article XIV of the Constitution of these United States in holding and determining that chapter 1027 of the Laws of the State of New York for the year 1895 as amended by chapter 835 of the Laws of the State of New York for the year 1896, entitled "An act

in relation to the issue of mileage books by railroad corporations," did not and does not violate the provisions of article XIV, subdivision 1, of the Constitution of the United States, and in holding and determining that by the refusal of the plaintiff in error to issue mileage books to the defendant in error under said statute the plaintiff in error has forfeited ten separate penalties of fifty dollars ($50.00) each to the defendant in error, and the defendant in error is entitled to recover judgment therefor against the plaintiff in error.

2. That the supreme court of the State of New York erred and violated article I of the Constitution of these United States in holding and determining that chapter 1027 of the Laws of the State
246 of New York for the year 1895 as amended by chapter 835 of the Laws of the State of New York for the year 1896, entitled "An act in relation to the issue of mileage books by railroad corporations," did not and does not violate the provisions of article I of the Constitution of the United States, and in holding and determining that by the refusal of the plaintiff in error to issue mileage books to the defendant in error under said statute the plaintiff in error has forfeited ten separate penalties of fifty dollars ($50.00) each to the defendant in error, and the defendant in error is entitled to recover judgment therefor against the plaintiff in error.

That the judgment of the supreme court of the State of New York, wherein the supreme court of the State of New York erred and violated article I of the Constitution of these United States and article XIV, subdivision 1, of the Constitution of these United States, as aforesaid, was entered in the clerk's office of the supreme court of the State of New York in and for the county of Allegany on the 17th day of October, 1898, and said judgment adjudged that said plaintiff in error, said Erie Railroad Company, should pay to said defendant in error, said Albert L. Purdy, ten separate penalties of fifty dollars ($50.00) each for the violation of the statutes aforesaid; that said last-named judgment, rendered in the supreme court of the State of New York, was duly affirmed by the court of appeals of said State, it being the highest court of law and equity in said State in which a decision could be had in said cause; that said judgment should be reversed for the reasons following, namely:

That the said judgment of the supreme court of the State of New York is repugnant to article I of the Constitution of the United States, which provides that "the Congress shall have power * * * to regulate commerce * * * among the several States;"
247 that the said judgment of the supreme court of said State is also repugnant to article XIV of the Constitution of the United States, which provides that no State shall "deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

There is error also in this, to wit: That by the record aforesaid it appears that the judgment aforesaid was given for the said Albert L. Purdy against the said Erie Railroad Company, whereas by the law of the land the said judgment ought to have been given for the said Erie Railroad Company against the said Albert L. Purdy; and the

said Erie Railroad Company prays that the judgment aforesaid, for the errors aforesaid and other errors in the record and proceedings and the matters herein set forth in said cause, may be reversed and held for nothing, and that said Erie Railroad Company may be restored to all things which it may have lost by occasion of said judgment.

ADELBERT MOOT,
Attorney for Plaintiff in Error, Buffalo, N. Y.

248 [Endorsed:] Supreme Court United States. Albert L. Purdy against Erie Railroad Company. Original. Petition, opinion, and assignment of errors. Moot, Sprague, Brownell & Marcy, attorneys for Erie Railroad Company; office and P. O. address, 45 Erie County Savings Bank building, Buffalo, N. Y. Due and personal service of a copy of the within petition, opinion, and assignment of errors is hereby admitted this 19th day of June, 1900. A. L. Purdy, attorney for d'f't in error.

249 Know all men by these presents that we, Erie Railroad Company, a corporation of the State of New York, residing in said State and having its principal place of business in New York city, in said State, as principal, and the United States Fidelity and Guaranty Company, a corporation duly organized under the laws of the State of Maryland and authorized to do business in the State of New York by the laws of the State of New York, as surety, are held and firmly bound unto Albert L. Purdy in the full sum of four thousand dollars ($4,000.00), to be paid to the said Albert L. Purdy, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 29th day of May, in the year of our Lord one thousand nine hundred.

Whereas lately, at a regular term of the supreme court of the State of New York, in a suit pending in said court between Albert L. Purdy, plaintiff, and said corporation, Erie Railroad Company, defendant, a judgment was rendered against the said Erie Railroad Company, defendant, and entered and docketed in the Allegany county clerk's office October 17th, 1898, for eleven hundred and seventy-one dollars and nine cents ($1,171.09), damages and costs, and thereafter said judgment was in all things affirmed by the court of appeals of the State of New York, and the remittitur of affirmance by said court of appeals was thereafter made the judgment of the supreme court of the State of New York, and further judgment was thereupon entered and docketed in said Allegany county clerk's office in favor of said Albert L. Purdy and against said Erie Railroad Company for the additional sum of one hundred and
250 thirty-four dollars and sixty-nine cents ($134.69), costs; and

Whereas said corporation, Erie Railroad Company, feels aggrieved thereby and is about to make application to the chief judge of the court of appeals of the State of New York or to a justice

of the Supreme Court of the United States to allow said Erie Railroad Company a writ of error, and to cause such writ of error to issue from the Supreme Court of the United States in due form of law, to the end that a justice of the Supreme Court of the United States may cause a citation to issue, directed to the said Albert L. Purdy, citing and admonishing him to be and appear at the Supreme Court of the United States, at Washington, within thirty days from the date thereof, and to the end that such other proceedings may be taken that the judgments rendered and proceedings had in said cause may be returned to the Supreme Court of the United States, to be reviewed and considered by it, to the end that such judgment may be reversed:

Now, the condition of the above obligation is such that if the said Erie Railroad Company shall prosecute its writ of error to effect and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

ERIE RAILROAD COMPANY,
By ADELBERT MOOT, *Its Attorney.* [SEAL.]
THE UNITED STATES FIDELITY & GUARANTY CO.
VINCENT RYAN, *Attorney-in-fact.*

Sealed and delivered in the presence of—
J. S. McDONNELL.

[Cancelled revenue stamps, 6c.]

251 STATE OF NEW YORK, } ss:
County of Erie, City of Buffalo, }

On this 29th day of May, 1900, before me personally came Vincent D. Ryan, attorney-in-fact of the United States Fidelity and Guaranty Company, a corporation created and existing under and by virtue of the laws of the State of Maryland, and duly authorized to transact business in the State of New York, to me known, who, being by me duly sworn, did depose and say that he resided in the city of Buffalo; that he is the attorney-in-fact of the United States Fidelity and Guaranty Company, the corporation described in and which executed the above instrument; that he knew the seal of said corporation; that the seal affixed to the said instrument was such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto as attorney-in-fact of said company by like order; that the liabilities of said company do not exceed its assets as ascertained in the manner provided in section 3 of chapter 720 of the Session Laws of the State of New York for the year 1893 and the acts amendatory thereof and supplementary thereto.

[NOTARIAL SEAL.] J. S. McDONNELL,
Notary Public in and for Erie Co., New York.

At a special meeting of the board of directors of the United States Fidelity and Guaranty Company, held at the office of the company, in the city of Baltimore, State of Maryland, on the 19th day of January, 1899, at which was present a quorum of said directors duly authorized to act in the premises, on motion it was unanimously—

Resolved, That in pursuance of section 811 of the Code of Civil Procedure of the State of New York, James Ryan, Vincent D. Ryan, and Austin F. Ryan, the attorneys-in-fact of the United States Fidelity and Guaranty Company for the county of Erie, in the State of New York, be and each of them is hereby authorized and empowered to sign, execute, and deliver any and all bonds or undertakings for and in behalf of this company, and to attach thereto the seal of the company, the same to be attested by either one of said attorneys-in-fact named, as occasion may require.

CITY OF BUFFALO, } ss:
County of Erie, State of New York, }

I, Vincent D. Ryan, attorney-in-fact of the United States Fidelity and Guaranty Company, have compared the foregoing resolution with the original thereof as recorded in the minute book of said company, and do hereby certify that the same is a true and correct transcript therefrom and of the whole of said original resolution.

Given under my hand and the seal of the company, at Buffalo, N. Y., this 29th day of May, 1900.

VINCENT D. RYAN,
Attorney-in-fact.

[Stamped:] Allegany Co. clerk's office. Geo. A. Green, clerk. Filed Jun- 19, 1900.

STATE OF NEW YORK, } ss:
Allegany Co. Clerk's Office, }

I, Geo. A. Green, clerk of the county of Allegany and also clerk of the county and supreme courts for the said county, the same being courts of record, having a common seal, do hereby certify that I have compared the foregoing copy — bond in action Purdy against Erie Railroad Company and endorsements thereon with the original thereof on file in this office, and that it is a correct transcript therefrom and of the whole of such original.

Witness my hand and the seal of said county, at Belmont, this 19th day of June, 1900.

[Seal Allegany County, N. Y.]

Per THOS. S. TEFFT, *Dep. Clerk.*

[10c. U. S. internal-revenue stamp, canceled 6, 19, '00. T. S. T.]

252 [Endorsed:] Supreme Court United States. Albert L. Purdy against Erie Railroad Company. Copy. Undertaking. Moot, Sprague, Brownell & Marcy, attorneys for Erie R. R. Company. Office and P. O. address, 45 Erie County Savings Bank

building, Buffalo, N. Y. Approved May 31, 1900. R. W. Peckham, justice Supreme Ct. U. S. May 31. Due and personal service of a copy of the within undertaking is hereby admitted this 19th day of June, 1900. A. L. Purdy, attorney for pl'ff.

253 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of the State of New York, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court on a remittitur from the court of appeals of the State of New York, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Albert L. Purdy, plaintiff, and Erie Railroad Company, defendant, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said defendant, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid,
254 with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within thirty days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 4th day of June, in the year of our Lord one thousand nine hundred.

[Seal of the Supreme Court of the United States.]

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by—
R. W. PECKHAM,
Associate Justice of the Supreme Court of the United States.

31 May, 1900.

255 [Endorsed:] Supreme Court United States. Albert L. Purdy against Erie Railroad Company. Original. Writ of error. Moot, Sprague, Brownell & Marcy, attorneys for Erie Railroad Company. Office and P. O. address, 45 Erie County Savings Bank building, Buffalo, N. Y. Due and personal service of a copy of the within writ of error is hereby admitted this 19th day of June, 1900. A. L. Purdy, attorney for pl'ff.

256 UNITED STATES OF AMERICA, *ss:*

To Albert L. Purdy, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of New York, wherein Erie Railroad Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Rufus W. Peckham, associate justice of the Supreme Court of the United States, this 31 day of May, in the year of our Lord one thousand nine hundred.

R. W. PECKHAM,
Associate Justice of the Supreme Court of the United States.

WELLSVILLE, *June* 19, 1900.

I hereby admit due service of the within citation upon me this 19 day of June, 1900.

A. L. PURDY,
Defendant in Error.

257 [Endorsed:] Supreme Court United States. Albert L. Purdy against Erie Railroad Company. Original. Citation. Moot, Sprague, Brownell & Marcy, attorneys for Erie Railroad Co. Office and P. O. address, 45 Erie County Savings Bank building, Buffalo, N. Y.

258 STATE OF NEW YORK:

Supreme Court, Allegany County.

ALBERT L. PURDY
against
ERIE RAILROAD COMPANY.

It is hereby stipulated and agreed by and between the respective parties herein that the annexed and foregoing is a true and correct copy of the record and all proceedings had and entered in the above-entitled cause by said court, including the written decision and reasons therefor, signed by the judges of said court and filed in the office of the clerk of the county of Allegany, as appears of record

and on file in said cause, and that the same is a true transcript therefrom and of the whole thereof; that attached thereto are the writ of error, with allowance endorsed thereon; the citation, with acceptance of service endorsed thereon; a copy of the bond to the adverse party, filed with the writ of error, and the assignment of errors in the Supreme Court of these United States.

Dated June 19, 1900.

A. L. PURDY, *Def't in Error.*
MOOT, SPRAGUE, BROWNELL & MARCY,
Attorneys for Plaintiff in Error.

259 [Endorsed:] Stipulation.

Endorsed on cover: File No., 17,924. New York supreme court. Term No., 439. The Erie Railroad Company, plaintiff in error, *vs.* Albert L. Purdy. Filed October 8th, 1900.